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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FIFTH INSTALMENT OF "E2" CLAIMS

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Table 1. Governing Council decisions referred to in the present report

Decision No.	Title	Document No.
7	Criteria for additional categories of claims	S/AC.26/1991/7/Rev.1
9	Propositions and conclusions on compensation for business losses: Types of damages and their valuation	S/AC.26/1992/9
13	Further measures to avoid multiple recovery of compensation by claimants	S/AC.26/1992/13
15	Compensation for business losses resulting from Iraq's unlawful invasion and occupation of Kuwait where the trade embargo and related measures were also a cause	S/AC.26/1992/15
10	Provisional rules for claims procedure	S/AC.26/1992/10
16	Awards of interest	S/AC.26/1992/16

Table 2. List of Panel reports and recommendations referred to in the present report

Short name	Title	Document No.
D(2.1) report	Report and recommendations made by the Panel of Commissioners concerning part one of the second instalment of individual claims for damages above US$100,000 (category "D" claims)	S/AC.26/1998/11
E1(3) report	Report and recommendations made by the Panel of Commissioners concerning the third instalment of "E1" claims	S/AC.26/1999/13
E2(1) report	Report and recommendations made by the Panel of Commissioners concerning the first instalment of "E2" claims	S/AC.26/1998/7
E2(2) report	Report and recommendations made by the Panel of Commissioners concerning the second instalment of "E2" claims	S/AC.26/1999/6
E2(3) report	Report and recommendations made by the Panel of Commissioners concerning the third instalment of "E2" claims	S/AC.26/1999/22
E2(4) report	Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of "E2" claims	S/AC.26/2000/2
E3(1) report	Report and recommendations made by the Panel of Commissioners concerning the first instalment of "E3" claims	S/AC.26/1998/13
E3(2) report	Report and recommendations made by the Panel of Commissioners concerning the second instalment of "E3" claims	S/AC.26/1999/5
E3(4) report	Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of "E3" claims	S/AC.26/1999/14
E4(1) report	Report and recommendations made by the Panel of Commissioners concerning the first instalment of "E4" claims	S/AC.26/1999/4

Short name	Title	Document No.
E4(3) report	Report and recommendations made by the Panel of Commissioners concerning the third instalment of "E4" claims	S/AC.26/2000/6
E4(4) report	Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of "E4" claims	S/AC.26/1999/18
F1(1.1) report	Report and recommendations made by the panel of Commissioners concerning part one of the first instalment of claims by Governments and International Organizations (category "F" claims)	S/AC.26/1997/6
F1(2) report	Report and recommendations made by the panel of Commissioners concerning the second instalment of "F1" claims	S/AC.26/1998/12

Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission"), at its twenty-first session in 1996, appointed the present Panel of Commissioners, composed of Messrs. Bernard Audit (Chairman), José María Abascal and David D. Caron (the "Panel" or "E2 Panel") to review "E2" claims. These claims were submitted by non-Kuwaiti corporations, public sector enterprises and other private legal entities (excluding oil sector, construction/engineering, export guarantee/insurance and environmental claimants). This report contains the Panel's recommendations to the Governing Council, pursuant to article 38(e) of the "Provisional Rules for Claims Procedure" (the "Rules"), concerning the fifth instalment of "E2" claims.

2. The instalment consists of 57 claims submitted by corporations primarily operating in the banking and financial sectors. These claims were selected by the secretariat of the Commission (the "secretariat") from the "E2" claims on the basis of criteria established under the Rules. These criteria include (a) the date of filing with the Commission, (b) the claimant's type of business activity, and (c) the type of loss claimed. The procedure used by the Panel in processing the claims is described in section II below.

3. The role and tasks of a panel of Commissioners, the applicable law and criteria, the liability of Iraq and a description of the applicable evidentiary requirements have been stated in detail in this Panel's report and recommendations concerning the first instalment of "E2" claims. 1/ Within this framework, three tasks have been entrusted to the Panel in the present proceedings. First, the Panel must determine whether the various types of losses alleged by claimants are, in principle, compensable before the Commission. Second, it must verify whether the losses that are in principle compensable have in fact been incurred by a given claimant. Third, it must value those losses found to be compensable and in fact incurred. The implementation of these successive steps with regard to the present instalment is described in sections III to V, followed by the Panel's recommendations in section VI.

I. OVERVIEW OF THE CLAIMS

4. The claimants are non-Kuwaiti companies which were engaged in banking, investment activities, insurance and other financial services at the time of Iraq's invasion of Kuwait on 2 August 1990. 2/ Most claimants made payments or otherwise extended credit, primarily to Iraqi or Kuwaiti parties, under lines of credit, loans, letters of credit, promissory notes and guarantees. These claimants allege that they did not receive monies due under the terms of these various financial contracts as a result of Iraq's invasion and occupation of Kuwait.

5. These and other claimants also allege that their business operations in the Middle East region sustained losses as a result of Iraq's invasion and occupation of Kuwait. Such losses include decline in business, losses on the sale of assets, increased costs of operations, including salary and termination payments, evacuation costs, and tangible property losses.

6. The various types of losses, as described by the claimants, are discussed in greater detail in section IV below.

II. PROCEDURAL MATTERS

7. Pursuant to article 16 of the Rules, the Executive Secretary of the Commission reported the significant legal and factual issues raised by the claims in his twenty-seventh report dated 26 April 1999 ("article 16 report"). Pursuant to paragraph 3 of article 16, a number of Governments, including the Government of Iraq, submitted their information and views on the Executive Secretary's report. These responses were transmitted to the Panel pursuant to paragraph 1 of article 32 of the Rules and were considered by the Panel in the course of its deliberations.

8. The secretariat made a preliminary assessment of the claims in order to determine whether each claim met the formal requirements established by the Governing Council in article 14 of the Rules. As provided by article 15 of the Rules, deficiencies identified were communicated to the claimants in order to give them the opportunity to remedy those deficiencies.

9. Given the large number of claims under review, the volume of supporting documentation submitted with the claims, and the complexity of the verification and valuation issues, the Panel made use of expert advice pursuant to article 36 of the Rules. This advice was provided by accounting consultants (the "expert consultants").

10. A preliminary review of the claims was undertaken by the secretariat in order to identify any additional information and documentation which might assist the Panel in properly verifying and valuing the claims. Pursuant to article 34 of the Rules, notifications were dispatched to the claimants ("article 34 notifications"), in which claimants were asked to respond to a series of standard questions and to provide additional documentation. The information provided by the claimants in response to the article 34 notifications was also considered by the Panel in its determination of the claims.

11. The Panel commenced its review of the claims in this instalment on 13 October 1999, the date upon which the claims were presented to it by the Executive Secretary pursuant to article 32 of the Rules.

12. In a procedural order dated 14 January 2000, the Panel instructed the secretariat to transmit to the Government of the Republic of Iraq the documents filed by five claimants for claims based on letters of credit issued by Iraqi banks. Iraq was invited to submit its comments on such documentation and to respond to questions posed by the Panel by 17 July 2000. The Panel has transferred these claims to a future instalment for a final determination of their compensability, as is further described in paragraph 59, infra.

13. In verifying the claims, valuing the alleged losses, and determining the appropriate amount of compensation, if any, the Panel also considered claim-specific reports prepared by the expert consultants under the Panel's supervision and guidance. These reports were based upon documents

submitted by each claimant, including their responses to the article 34 notifications. The Panel applied the procedures and methods described in its previous reports in verifying and valuing the losses alleged. 3/ Where necessary, the Panel adapted these procedures and methods to take into account the nature of the particular claims in this instalment.

14. Paragraph 3 of article 35 of the Rules provides that corporate claims "must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss". The Panel found that several claims, or portions thereof, were fundamentally defective in that each claimant failed to submit documents other than a claim form and a brief statement of claim. The lack of supporting evidence was absolute and prevented the Panel from understanding the losses claimed and ascertaining whether such losses were compensable. For these reasons, the Panel finds that such claims, or portions thereof, are not compensable.

III. LEGAL ISSUES

15. The claims in the present instalment that are based on loans, guarantees and letters of credit raise new legal issues that are addressed in this section. The claims based on loans include loans that were not tied to a particular underlying transaction ("general purpose" loans) and loans that were expressly made to finance a particular project ("specific purpose" loans). All of the general purpose loans and some of the specific purpose loans were rescheduled, a circumstance also bearing on the Panel's analysis.

16. In deciding whether it has jurisdiction over these claims, the Panel must apply the findings in its first report in respect of the clause in paragraph 16 of Security Council resolution 687 (1991), which excludes from the jurisdiction of the Commission "the debts and obligations of Iraq arising prior to 2 August 1990" (the "arising prior to" clause). In that report the Panel concluded, with reference to the construction and supply claims before it, that when the performance giving rise to the debt had been rendered by a claimant more than three months before Iraq's invasion and occupation of Kuwait, that is, prior to 2 May 1990, a claim based on payment owed for such performance is to be considered as a debt or obligation arising prior to Iraq's invasion and occupation of Kuwait and is therefore outside the jurisdiction of the Commission. 4/

17. In subsection A, below, the Panel considers the applicability of this rule to the general purpose loans that are before it; in subsection B, specific purpose loans; in subsection C, rescheduled loans; in subsection D, guarantees; in subsection E, letters of credit; and in subsection F, refinancing arrangements.

A. General purpose loans

18. Several claims under consideration are based on loans to Iraqi parties where the loan agreements did not state a particular purpose to which the funds were to be applied. The Panel gives consideration to the issue as to when a borrower's obligation under these loans should be considered to have arisen for the purpose of the "arising prior to" clause.

19. In response to the Commission's article 16 report that solicited comments on this issue, three Governments put forward their views regarding the application of the "arising prior to" clause. Two Governments, including the Government of Iraq, have taken the position that where the claimant-lender disbursed funds under a loan agreement before 2 August 1990, a claim based on non-payment of the loan is not within the Commission's jurisdiction. The third Government expressed the view that the Commission's jurisdiction should be based upon the date on which repayments under the loan became due and payable, relying on the difference in the nature of the claimant's performance between a supply or construction contract on the one hand, and a loan contract on the other,

and noting that generally the obligation to repay does not arise on the date on which the monies are made available to the debtor.

20. In the course of its consideration of this issue and the views just described, the Panel determined that all of the general purpose loans made to Iraqi parties in the present instalment are rescheduled loans. For the reasons explained in subsection C, the circumstance of rescheduling in itself places these loans outside the jurisdiction of the Commission. The Panel therefore does not find it necessary to determine the effect of the application of the "arising prior to" clause to non-rescheduled general purpose loans at this time and defers such consideration until a claim squarely presents the issue.

B. Specific purpose loans

21. Most loan agreements presented to the Panel in this instalment either specified the particular purpose for which the funds were provided or designated a particular third-party supplier to whose account the funds were to be directly transmitted. For instance, the funds were to be used to pay a contractor in a construction contract, or to pay the seller of goods in an import transaction. In addition, the loan agreements contained extensive references to these underlying transactions; in fact, the agreements often conditioned the release of the funds on the completion of the underlying transaction or a particular part thereof, such as completion by the contractor of a particular stage of the construction contract project, or shipment by the seller of the goods covered by the sales contract. The Panel distinguishes such specific purpose loans from the general purpose loans discussed above.

22. The Panel notes that the specific purpose loans before it are payment mechanisms for the underlying transactions (construction, sale or other provision of goods or services), and as such are intimately related to them. The Panel finds that the "arising prior to" clause must be applied to such intimately related transactions so that no part of an old debt comes within the jurisdiction of the Commission. Moreover, although the Panel has before it claims by lenders based on the associated loan, the Panel notes that claims before other Panels, involving similarly related transactions, are brought instead by contractors and exporters. This circumstance buttresses the need to consider such loans and their underlying transactions as a whole to avoid disparate treatment among claimants based on their position in the overall arrangement. In light of these considerations, the Panel determines, with respect to the claims under review, that the claims based on an associated specific purpose loan must be subject to the same jurisdictional criteria as those that apply to the underlying transaction. Therefore, where the performance of the underlying transaction was completed prior to 2 May 1990 and is, as such, outside the Commission's jurisdiction, the Panel finds that the associated specific purpose loan, even if payable after 2 May 1990, is likewise outside the Commission's jurisdiction.

C. Rescheduled loans

23. A number of claims under consideration are based on loans to Iraqi parties where the original terms of payment were later renegotiated and payments were rescheduled. The question for the Panel's determination is the application of the "arising prior to" clause in the case of rescheduled loans.

24. The Panel addressed the issue of rescheduling and other deferred payment arrangements in its first report. There it found that:

> "The distortion of normal conditions in Iraq's international trade during the mid- to late 1980s resulting from Iraq's foreign debt was also manifest in the fact that it no longer paid its then existing debts on originally-contracted terms, but required deferments in order to allow it the time needed to gather the funds necessary to make payments that became due and to clear debts that were overdue." 5/

The Panel recognized that, under rescheduling agreements, the old debt might legally be regarded as new under applicable municipal law. However, the Panel found that such rescheduling and other deferred payment arrangements with Iraqi debtors went to the heart of what the Security Council described in resolution 687 (1991) as the debt of Iraq "arising prior to 2 August 1990". 6/ Correspondingly, the Panel noted that the Security Council did not intend that the Compensation Fund be used for the payment of creditors unpaid long before Iraq's invasion and occupation of Kuwait. 7/ Therefore, the Panel concluded that the rescheduling of old and overdue debts, regardless of their status under municipal law, did not render them "new" debts for purposes of the "arising prior to" clause. 8/

25. The Panel determines that this reasoning likewise applies to rescheduled loans, and, as a consequence, finds that claims based on such loans are not within the jurisdiction of the Commission. 9/

D. Guarantees

26. In a number of the claims under review, the Central Bank of Iraq acted as guarantor for loans or other debts by an Iraqi party, and undertook to pay any outstanding amount upon default by the debtor. These claims require the Panel to address the question of when the guarantor's obligation arose for the purpose of the "arising prior to" clause.

27. The Panel recognizes that under general principles of contract law the undertaking of the guarantor is distinct from that of the debtor. The Panel also recognizes, however, that for the claims under consideration the two obligations are intimately related as the purpose of the guarantee is to secure repayment of the debt. Accordingly, when the debt arose prior to 2 May 1990, the guarantor's obligation will likewise be considered to have arisen prior to 2 May 1990 and is not within the jurisdiction of the Commission. 10/

E. Letters of credit

28. A number of claimants are banks which paid the beneficiaries of letters of credit issued by Iraqi banks to finance the purchase of goods by Iraqi buyers. These claimants allege losses arising from the failure of the Iraqi issuing banks to honour their reimbursement obligations. 11/ The question for determination by the Panel is when the obligation of the Iraqi issuing banks arose within the meaning of the "arising prior to" clause.

29. The Panel notes that the E2A Panel has previously considered the closely related situation of claims brought by the beneficiary of a letter of credit, that is, the exporter of goods in that case, rather than by the paying bank. 12/ In the claims before the E2A Panel, the beneficiary-exporter sought compensation for the failure of the Iraqi bank to honour a letter of credit that it had issued to finance the purchase of goods shipped by the beneficiary-exporter to an Iraqi importer. 13/ For the purposes of the "arising prior to" clause, the E2A Panel found that it is the exporter-claimant's presentation of documents, as specified in the letter of credit, that completes its performance and triggers the issuing bank's obligation to honour the letter of credit. Consonant with this Panel's findings in its first report, the E2A Panel concluded that an exporter's claim is within the Commission's jurisdiction only where the documents were presented on or after 2 May 1990 to the bank with which the claimant dealt. 14/ Further, to ensure that Iraq's old debt would not be masked by unusually long or deferred payment terms, the E2A Panel added the condition that the period between the shipment of goods and the presentation of documents must not have exceeded 21 days (that being considered the normal period for the presentation of documents after shipment). 15/

30. This Panel likewise finds that the relationship of the letter of credit to the underlying transaction should be considered when applying the "arising prior to" clause to a claim based on the letter of credit. Accordingly, where the claimant is the paying bank, the Panel first looks to the presentation of documents to the issuing bank as constituting performance by the claimant for purposes of the "arising prior to" clause. 16/ The Panel then looks at the date of the exporter's shipment of the goods. This second inquiry eliminates the possibility that compensation will be paid for Iraq's old debt and conforms to the purpose underlying a letter of credit, which is to provide payment for the goods to the seller. Therefore, for a paying bank's claim to be within the Commission's jurisdiction, the claimant bank must have presented the documents to the issuing bank after 2 May 1990, and the period between the shipment and the presentation of documents must not have exceeded 21 days.

F. Refinancing arrangements

31. Several claims involve agreements concluded between 1986 and May 1990 in which the claimant banks and Iraqi borrowers agreed to refinance various amounts originally due between 1986 and 1988. The unpaid amounts arose

from promissory notes issued by an Iraqi party, from letters of credit issued by an Iraqi bank and paid to the beneficiary by the claimant bank, or from overdrafts provided by the claimant bank to an Iraqi bank. Under the terms of the refinancing arrangements, some payments were not due until after 2 August 1990.

32. The Panel determines that these "refinancing" transactions are merely the repackaging and rescheduling of old and overdue debts. As such, the reasoning that applies to rescheduled loans (as set forth in paragraphs 24 and 25) likewise applies here. The Panel therefore finds that claims based on the refinancing of such old and overdue debts are not within the Commission's jurisdiction.

IV. REVIEW OF THE CLAIMS PRESENTED

33. The Panel now reviews the claims before it. After first describing the circumstances giving rise to the claims, the Panel considers whether the losses alleged are compensable in principle. The claims raise legal issues addressed in previous reports of this and other panels of the Commission, as well as those new issues discussed in the preceding section. In dealing with the former, the Panel will elaborate on these earlier findings to the extent required in the present instalment. Since the claims under review raise a wide variety of losses that the claimants have presented in different ways, the Panel has re-categorized certain of the losses to ensure consistency in its analysis and transparency in its presentation.

34. Except where otherwise noted, in this section the Panel only addresses the issue of compensability of the various claims as a matter of principle. The Panel's valuation of the compensable claims is reflected in annex II.

A. Contracts involving Iraqi parties

35. In this section, the Panel addresses claims by banks and financial institutions which provided financing to Iraqi borrowers, public or private, in the form of lines of credit, loans, letters of credit, promissory notes and refinancing arrangements. 17/ These claims are consequently divided according to the nature of the transactions.

1. Loans

(a) Rescheduled loans

(i) Claims description

36. Four claimants were members of a syndicate, a group of lender banks, which made two separate, general purpose loans to Rafidain Bank of Iraq in 1983 and 1985. The Central Bank of Iraq guaranteed both syndicated loans.

37. The first syndicated loan of USD 500 million was made to Rafidain Bank on 28 March 1983 by a group of lenders that included all four claimants. The original loan agreement called for Rafidain Bank to repay the loan in seven monthly instalments between 29 March 1985 and 29 March 1988.

38. A first rescheduling of the loan occurred in 1987; a second one took place on 1 March 1990, after Rafidain Bank failed to pay instalments due in March and September 1989. The second rescheduling agreement called for Rafidain Bank to repay the loan in a series of instalments between 28 February 1990 and 29 December 1993. The claimant alleges that Rafidain Bank paid the instalments due in February 1990 and June 1990, but that it failed to pay the instalment due in December 1990 or any instalments thereafter.

39. Two of the same four banks participated in a syndicate which made a second loan of USD 500 million to Rafidain Bank on 25 October 1985. The loan agreement provided that Rafidain Bank would repay the loan in seven equal instalments from 25 October 1987 to 25 October 1990. The parties rescheduled the loan on 1 November 1987 after the first instalment had fallen due and was not paid. Rafidain Bank paid the first four instalments that fell due in 1989, but failed to pay the instalment due in October 1990 and the remaining instalments.

(ii) Compensability

40. The claims described above are based on loans and associated guarantees that were renegotiated and rescheduled prior to 2 August 1990. For reasons explained in paragraphs 24 and 25 above, such rescheduled debt is considered to be old for purposes of the "arising prior to" clause. The Panel finds that the obligations of the Iraqi borrowers with respect to these loans arose, within the meaning of Security Council resolution 687 (1991), prior to 2 August 1990, and are therefore outside the Commission's jurisdiction.

41. For the reasons explained in paragraph 27, the associated guarantees are to be considered on the same basis as the original loans. Consequently, they also are outside the Commission's jurisdiction.

(b) Specific purpose loans for construction projects

(i) Claims description

42. Two claimant banks based in Germany provided financing to Iraqi enterprises (hereafter "employers") for the payment of contractors in conjunction with various construction projects in Iraq. The original loans were concluded between 1983 and 1985, and were guaranteed by the Central Bank of Iraq. The claimants also made several additional loans to the employers between 1984 and 1989 pursuant to supplemental agreements. Under the agreements, the loan proceeds were to be credited to the accounts of the contractors following the presentation of certain documents to the claimant banks, including performance certificates evidencing the contractors' progress in completing the projects. Based on the evidence submitted by the claimants, it appears that performance certificates were presented for work performed through 1989.

43. The employers failed to pay instalments due on the agreements between 1985 and 1987. As a result of negotiations between the employers, the claimants and their respective governments, "prolongation" agreements were concluded between 1987 and 1989. These agreements deferred the amounts due under the loan agreements and provided for repayment of the outstanding balance in a series of instalments payable between October 1987 and September 1991. The employers generally failed to make any further payments after 1989, although one claimant received payments in 1990 pursuant to an oil barter arrangement.

44. Another claimant bank, based in Egypt, was part of a syndicate of banks which provided financing for confirmation by a European bank of a letter of credit issued by Rafidain Bank in 1983 in connection with a construction project. Although the European bank made the required payments to the beneficiary, Rafidain Bank failed to reimburse the syndicate on the agreed dates in 1986. In 1986 the parties rescheduled Rafidain Bank's repayments to fall due in instalments between 1989 and 1992. Rafidain Bank failed to make any payments after May 1989.

(ii) Compensability

45. With respect to the claims under review, the Panel finds that the loans and associated guarantees are intimately related to transactions that were performed prior to 2 May 1990. As regards the claims described in paragraphs 42 and 43, this interrelationship is evidenced by the required presentation of performance certificates as a condition for disbursements under the loan and by the stipulation that such disbursements be credited directly to the account of the contractor. As regards the claim described in paragraph 44, the loan was intimately related to a letter of credit issued specifically for the construction project. In all these instances, the contractor completed performance of the underlying contract prior to 2 May 1990. For the reasons set forth in paragraph 22, the Panel finds that the claims based on these transactions are outside the Commission's jurisdiction under the "arising prior to" clause. 18/ The associated guarantees are considered on the same basis as the loans guaranteed, and consequently the claims based on these guarantees also are outside the Commission's jurisdiction.

(c) Specific purpose loans for the purchase of goods

(i) Claims description

46. Three claimants provided financing for goods purchased by Iraqi buyers.

47. One claimant, a German bank, made a loan to an Iraqi buyer in February 1988 to finance the latter's purchase of goods from a German exporter which were shipped in March 1988. Disbursements under the loan were to be made to the exporter's account upon presentation of a certificate of shipment by the exporter. The loan agreement called for the Iraqi buyer to repay the loan in instalments from September 1988 to March 1991. The claimant states that it paid the exporter, but that the Iraqi buyer failed to make the instalment payments due under the loan after September 1988.

48. Another claimant bank, based in Egypt, participated in a syndicate which provided funds to a bank that confirmed a letter of credit issued by the Central Bank of Iraq. The letter of credit, which financed the purchase of goods by an Iraqi state enterprise, called for the Central Bank of Iraq to reimburse the confirming bank 540 days after the date of the

exporter's shipment of the goods. The exporter shipped the goods in 1985. The Central Bank of Iraq allegedly failed to reimburse the confirming bank when the principal amount fell due in 1987. Under the separate 1985 agreement between the confirming bank and the syndicate, the confirming bank was to forward to the syndicate any reimbursement payments that it received from the Central Bank of Iraq. The claimant now seeks compensation for its share of the amount unpaid by the Central Bank of Iraq.

49. The same Egyptian bank also provided a guarantee in 1986 to a confirming bank with reference to the latter's obligation to pay drafts drawn by an exporter on several letters of credit issued by Rafidain Bank. When Rafidain Bank failed to pay the exporter's drafts as they matured in 1986, the claimant reimbursed the confirming bank, pursuant to the guarantee agreement. Although no specific repayment schedule was established, Rafidain Bank made partial payments to reimburse the claimant between 1986 and 3 May 1990. The claimant alleges, however, that Rafidain Bank failed to reimburse it fully, and now seeks the balance due.

50. The third claimant, a United States supplier, is the successor in interest of an export credit insurer which had reimbursed a paying bank in Bahrain for its payments to exporters (including the claimant) in respect of goods shipped to Iraq between 1988 and March 1990. The Bahraini bank made the payments pursuant to a line of credit established in 1987 and 1989 in favour of Rafidain Bank, which had issued the letters of credit in favour of the exporters. Rafidain Bank was to repay the Bahraini bank in instalments due one to three years after the dates of shipment, which took place between June 1988 and March 1990. Rafidain Bank allegedly failed to pay instalments that fell due in September 1990 and thereafter.

(ii) Compensability

51. As evidenced by the provisions of the relevant loan agreements, each of the described loans was a payment mechanism to finance the purchase of goods by an Iraqi party. In the case of the German bank, the interrelationship between the loan and the underlying sales transaction is further evidenced by the fact that disbursements were to be made directly to the account of the exporter. In the case of the Egyptian bank, there are various references in the syndicate agreement to the specific sales transaction; for example, the date of repayment by the Central Bank of Iraq was tied to the date of shipment of the goods. Similarly, the guarantee by the Egyptian bank to a confirming bank relates to letters of credit issued for the shipment of goods. In the case of the North American trading company, the line of credit agreement identifies a particular supplier as the beneficiary of each letter of credit.

52. Accordingly, for the reasons stated in paragraph 22, in order to determine whether these claims are within the Commission's jurisdiction under the "arising prior to" clause, the Panel looks to the date of performance of the underlying transaction that was the subject of the loan,

that is, the date of shipment of the goods. In each case, the goods were shipped well before 2 May 1990. The Panel therefore finds that the claims are based on debts or obligations of Iraq that arose, within the meaning of Security Council resolution 687 (1991), prior to 2 August 1990 and are therefore outside the Commission's jurisdiction.

(d) Specific purpose loans for financing the purchase of shares

53. One claimant is a bank based in Egypt of which Rafidain Bank is a shareholder. In 1985 and 1986, the claimant increased its capital stock, and its shareholders participated in the increase to the extent of their proportional share. To fund Rafidain Bank's participation in the capital increase, in 1986 the claimant granted to Rafidain Bank two interbank deposits of USD 10 million each. The funds were to be repaid by Rafidain Bank within five years in equal semi-annual instalments commencing in 1988. Rafidain Bank paid the instalments due in 1988 and 1989, but failed to pay the full instalment in June 1990 and all instalments thereafter.

54. The Panel finds that the specific purpose of the loan made by the claimant was to finance a transaction completed in 1985 and 1986, namely Rafidain Bank's purchase of the newly issued shares. For the reasons described in paragraph 22 above, since the underlying transaction was completed prior to 2 May 1990, the Panel finds that the obligations of the Iraqi borrower arose, within the meaning of Security Council resolution 687 (1991), prior to 2 August 1990 and therefore the claim is outside the Commission's jurisdiction.

2. Letters of credit

(a) Claims description

55. Eleven claimants are banks which paid exporters, mainly between 1988 and July 1990, pursuant to a number of letters of credit issued by the Central Bank of Iraq and two Iraqi banks, Rafidain Bank and Rasheed Bank. The credits were issued to finance the purchase of goods by Iraqi importers. The goods were shipped between 1988 and July 1990 under payment terms ranging from payment upon delivery to payment two years from the date of the shipment.

56. The claimant banks each allege that they paid the exporters upon the exporters' shipment of the goods and presentation of the required documents. Although the Iraqi issuing banks were obliged to reimburse the claimant banks upon the latter's payment to the exporters, the claimants allege that the Iraqi banks failed to do so.

(b) Compensability

57. For the reasons stated in paragraphs 29 to 30, in order to determine whether the claims by the paying banks are within the Commission's jurisdiction under the "arising prior to" clause, the Panel looks to the date that the claimant presented the documents to the issuing bank, 19/ as

well as to the date of performance of the underlying transaction, that is, the date of shipment of the goods.

58. In some instances, the record does not provide sufficient evidence of the relevant facts regarding the particular transactions under review and therefore no recommendation regarding compensation can be made. Where sufficient evidence is present, the Panel finds that the remaining transactions in six of the eleven claims concern payments made in respect of shipments by the exporter that took place more than 21 days before 2 May 1990. 20/ Consequently, these claims are outside the Commission's jurisdiction.

59. The other five claims include payments relating to shipments made within 21 days prior to 2 May 1990. In a procedural order dated 14 January 2000, the Panel instructed the secretariat to transmit to the Government of the Republic of Iraq the claim files relating to these five claims, together with a number of specific factual questions. Iraq was invited to submit its comments and responses by 17 July 2000. The Panel has transferred these claims to a future instalment for a final determination of their compensability.

3. Refinancing arrangements

(a) Claims description

60. Five claimants variously allege that they paid letters of credit issued by Rafidain Bank, provided overdrafts to Rafidain Bank, or purchased promissory notes issued by Iraqi entities and guaranteed by Rafidain Bank. Repayments on these transactions from Rafidain Bank were originally due between 1986 and 1988.

61. Between 1986 and 15 May 1990, each of the claimants and Rafidain Bank entered into a refinancing agreement after Rafidain Bank failed to pay the amounts when due. Under the refinancing agreements, the outstanding amounts on the letters of credit, overdrafts, or promissory notes were to be repaid by Rafidain Bank in instalments falling due between 1987 and 1993. A guarantee from the Central Bank of Iraq supported most of the refinancing agreements. Rafidain Bank stopped making payments under four of the five refinancing agreements by 1989. With respect to the fifth one, signed in May 1990, Rafidain Bank did not pay the instalments due after July 1990.

(b) Compensability

62. For the reasons stated in paragraph 32, the Panel finds that the loans in the preceding paragraph represent the repackaging and rescheduling of overdue debts that originated before Iraq's invasion of Kuwait. As such, the claims are based on debts and obligations of Iraq that arose, within the meaning of Security Council resolution 687 (1991), prior to 2 August 1990 and are therefore outside the Commission's jurisdiction. For the reasons explained in paragraph 27, the Panel finds that claims based on

the associated guarantees are considered on the same basis and consequently also are outside the Commission's jurisdiction.

4. Promissory notes

63. Two claimants are banks which purchased promissory notes issued by Iraqi companies between 1983 and January 1988. The notes originally had been issued in favour of non-Iraqi suppliers of goods or services in conjunction with construction projects in Iraq; and they were guaranteed by the Central Bank of Iraq. Both claimant banks purchased the promissory notes before their maturity dates. The Iraqi issuers allegedly did not pay the promissory notes when they fell due, between 1988 and April 1990.

64. The Panel finds that these promissory notes were issued for payment of work performed before 2 May 1990. The Panel notes that the "E1" Panel and the "E3" Panel both have concluded that where promissory notes were issued for payment of work that was performed prior to 2 May 1990, claims based on the notes constitute debts or obligations of Iraq that arose, within the meaning of Security Council resolution 687 (1991), prior to 2 August 1990, and are outside the Commission's jurisdiction. 21/ This Panel concurs in this view and, accordingly, it concludes that these claims are outside the Commission's jurisdiction. For the reasons explained in paragraph 27, the Panel finds that claims based on the associated guarantees are to be considered on the same basis and consequently also are outside the Commission's jurisdiction.

5. Uncollected debts

65. One claimant which issues credit cards seeks compensation for the unpaid charges of Iraqi parties that were not settled after Iraq's invasion of Kuwait.

66. The Panel's review of the claim file reveals that the goods and services underlying the unpaid credit card charges of Iraqi parties were provided within 90 days prior to Iraq's invasion and occupation of Kuwait, and therefore are not barred from the Commission's jurisdiction by the "arising prior to" clause. Moreover, the Panel finds that these debts all fell due before the end of the compensable period for Iraq, i.e. before 2 August 1991, and therefore the claim is compensable in principle. 22/

B. Contracts involving Kuwaiti parties

1. Loans

67. Four claimants provided loans, respectively, to Kuwaiti individuals, Kuwaiti companies, and individuals of Indian nationality doing business in Kuwait. The claimants assert that, as a result of Iraq's invasion and occupation of Kuwait, they did not receive payments due under the loans. The claims involve different circumstances of non-payment, which are described separately hereafter.

(a) Alleged discharge during period of occupation

(i) Claims description

68. One claimant bank made three separate loans (hereinafter referred to as "Loan 1," "Loan 2," and "Loan 3") between 1988 and June 1990 to two borrowers of Indian nationality who were doing business in Kuwait. The monies under all three loans had been disbursed; two loans were to be repaid in Kuwaiti dinars, and the other in United States dollars, at various repayment dates ranging from January 1989 to April 1992. As collateral for the three loans, the claimant obtained security interests in bank deposits of the two borrowers in India.

69. While the claimant's branch office in Kuwait was under the control of Iraqi forces in November and December 1990, and after Iraqi authorities had withdrawn Kuwaiti currency from circulation and placed any debts denominated in that currency on a par with the Iraqi dinar, 23/ the two borrowers repaid Loan 1 and Loan 3 (both past due instalments and all future instalments) in Iraqi dinars to the claimant's branch office. In addition, the borrowers secured from the Iraqi authorities, then in control of the claimant's Kuwait branch office, certificates releasing the borrowers from further liability on those two loans. Loan 2 was not repaid in Iraqi dinars or any other currency.

70. Following the liberation of Kuwait, the claimant filed separate actions in Kuwait against the two borrowers to recover the principal and interest due on the three loans, challenging the payments made by the borrowers in Iraqi dinars. As regards Loan 1, a judgement in the claimant's favour was entered by a Kuwaiti court and was upheld on appeal, but the claimant has been unable to execute on this judgement. 24/ An injunction from an Indian court obtained by both borrowers prevents the claimant bank from enforcing its security interest over the borrowers' deposits that served as collateral for each of the three loans. In 1997, the claimant entered into a settlement agreement with respect to Loan 3, but seeks the difference between the settlement and the unpaid amount.

(ii) Compensability

71. In respect of Loan 1 and Loan 3, the Panel finds that the claimant's losses were directly caused by the actions of Iraqi officials in connection with Iraq's invasion and occupation, within the meaning of Governing Council decision 7. 25/ Such actions included the takeover of the claimant's branch in Kuwait, the forced devaluation of debts denominated in Kuwaiti dinars, and, specifically, the issuance of the certificates of release of the borrowers' liability on the loans. 26/ Accordingly, the claimant's losses arising from Loan 1 and Loan 3 are compensable in principle. The Panel further finds that under the circumstances of this claim, the claimant's settlement agreement regarding Loan 3 is in principle an act in mitigation of its loss, and does not preclude a claim for the remaining balance. 27/

72. With respect to Loan 2, the facts indicate that the claimant's alleged losses were not directly caused by the actions of Iraqi officials in connection with Iraq's invasion and occupation. Unlike Loan 1 and Loan 3, no certificate of release was issued by Iraqi officials for Loan 2, nor was payment made while the claimant's branch was under the control of the Iraqi forces. Thus the claimant's loss was directly caused by the borrower's failure to repay the loan and the claimant's inability to enforce its security interest due to the injunction issued by the court in India. Accordingly, this claim is not compensable before this Commission.

(b) Alleged inability to repay

(i) Claims description

73. One claimant bank made several loans between 1987 and April 1990 to a Kuwaiti trading company. Another claimant made one loan to the same borrower in September 1989. Both claimants allege that the Kuwaiti borrower did not make payments after 2 August 1990 because its premises and other assets were damaged or destroyed during Iraq's invasion and occupation of Kuwait.

74. A third claimant is a construction company which had made available a credit in 1987 to a related company operating in Kuwait. Disbursements were made in 1990 to finance the purchase of machinery by the Kuwaiti party from a third party. The claimant alleges that all of the borrowers' equipment, machinery and plant were destroyed, and that the borrower ceased to exist as a consequence of Iraq's invasion and occupation of Kuwait.

(ii) Compensability

75. The Panel recalls the determination in its first report that paragraph 10 of Governing Council decision 9, regarding losses suffered in connection with contracts to which Iraq was not a party, requires claimants seeking compensation for the non-payment of amounts owed by Kuwaiti parties to "provide specific proof that the failure to perform was the direct result of Iraq's invasion and occupation of Kuwait." 28/ Other panels of the Commission have concurred in this determination. 29/ The Panel has further noted that the failure of the Kuwaiti party to pay amounts owed "should not, for example, stem from a debtor's economic decision to use its available resources to ends other than discharging its contractual obligation, for such an independent decision would be the direct cause of the non-payment" rather than Iraq's invasion and occupation of Kuwait. 30/ The Panel reiterates that it is not sufficient for a claimant merely to allege that the Kuwaiti party was adversely affected by Iraq's invasion and occupation. The claimant must provide specific evidence to demonstrate that the Kuwaiti party's inability to pay the debt was a direct result of Iraq's invasion and occupation of Kuwait.

76. With reference to the present claims, the Panel finds the following. The first two claimants have not provided the requisite evidence and

therefore the losses alleged are not compensable. The third claimant has provided sufficient evidence indicating that the Kuwaiti debtor ceased to exist as a direct result of Iraq's invasion and occupation of Kuwait. Consequently, the Panel concludes that this claim is compensable in principle.

2. Letters of credit

77. Three claimants are banks which paid letters of credit issued by Kuwaiti banks between February and June 1990 to finance the purchase of goods by Kuwaiti buyers. According to the claimants, the exporters shipped the goods in June and July 1990, respectively, but delivery to the Kuwaiti buyer was prevented by Iraq's invasion and occupation of Kuwait. The claimants allege various reasons for their failure to receive full or partial reimbursement from the Kuwaiti issuing bank, as described hereafter.

(a) Impossibility to deliver the goods

78. Two of the claimants allege that, following the dispatch of the goods and payment to the exporter, payment requests could not be sent to or acted upon by the Kuwaiti issuing bank and that goods could not be delivered to the Kuwaiti buyer due to Iraq's occupation of Kuwait. To avoid further losses, both claimant banks took possession of the goods and resold them to the exporters at a lower price. The claimants sought reimbursement from the Kuwaiti issuing bank for the difference between the amount paid on the letter of credit and that recouped through the re-sale of the goods, but the Kuwaiti banks did not grant their request.

79. The Panel finds that the claimants' inability to receive payments from the Kuwaiti issuing bank was directly caused by the invasion and occupation of Kuwait. 31/ The Panel further finds that the claimants acted reasonably and in good faith to mitigate their losses by reselling the goods. The Panel therefore concludes that the claims are compensable in principle.

(b) Non-complying documents

80. One claimant bank states that the Kuwaiti issuing bank of a letter of credit refused to authorise payment to the exporter on the basis that the documents presented by the exporter in July 1990 did not conform to the requirements of the letter of credit. The claimant bank subsequently secured payment in March 1991 from the Kuwaiti bank's New York branch and paid the exporter, but the funds transfer was later reversed as not actually authorised by the Kuwaiti bank. At that point, the claimant tried to exercise its security interest over the goods, but discovered that the goods had been lost during Iraq's invasion and occupation while they were stored at the Port of Kuwait.

81. Given the justified refusal of payment from the Kuwaiti issuing bank based upon the non-conformity of the documents and the fact that the goods

had already been lost at the time of payment, the Panel finds that the claimant's payment to the exporter was at its own risk. The Panel therefore finds that the claimant's loss is not a direct result of Iraq's invasion and occupation of Kuwait.

3. Uncollected debts

(a) Claims description

82. Six claimants are either banks, private lenders, or issuers of credit cards or traveller's cheques which seek compensation for unpaid amounts due from Kuwaiti parties under various types of transactions. These transactions include standby letters of credit, financing agreements for the purchase of goods by Kuwaiti buyers, fees for services and machinery, credit card charges and the outstanding balance on the account of a selling agent of traveller's cheques.

(b) Compensability

83. The Panel finds that these six claims are to be evaluated under the standard of paragraph 10 of Governing Council decision 9, regarding losses suffered in relation to contracts to which Iraq was not a party, as described above in paragraph 75.

84. With reference to the present claims, the Panel finds that three of the claimants have provided sufficient evidence with respect to all their debtors to demonstrate that the non-payment of the debts in question was a direct result of Iraq's invasion and occupation of Kuwait. A fourth claimant has made such a showing with respect to one of its debtors. These claims therefore are compensable in principle. Specifically, three of the claimants have shown to the satisfaction of the Panel that the Kuwaiti debtor did not resume operations as a direct result of Iraq's invasion and occupation. A fourth claimant has provided specific proof that Iraq's invasion and occupation directly caused the debtor's failure to perform.

85. The remaining claimants have failed to prove that the Kuwaiti party's failure to perform was directly caused by Iraq's invasion and occupation of Kuwait, such as evidence that the Kuwaiti borrower, for example, was rendered bankrupt, insolvent, or ceased to exist as a result of the invasion and occupation of Kuwait.

C. Other contract-related losses

1. Traveller's cheques

(a) Traveller's cheques lost or stolen in Kuwait

(i) Claims description

86. Three claimants are issuers of traveller's cheques which regularly sent cheques to their selling agents or correspondent banks in Kuwait. The claimants allege that cheques were lost or stolen while in the possession

of the selling agents in Kuwait during the period of Iraq's occupation of Kuwait. The claimants state that the cheques are cash equivalents and that they are under an obligation to pay cheques that are accepted by third parties and presented for payment. These claimants seek compensation for various types of losses, which are described below.

87. For the most part, the claimants seek compensation for payments that they have already made on the lost or stolen traveller's cheques. 32/ The claimants also seek compensation for amounts that they may have to pay at some time in the future. The claimants allege that they may have to make payments on cheques that are still missing, if they are presented for payment in the future. One claimant rejected some requests for payments made by encashing banks or agents because it identified the cheques as lost or stolen, but claims on the basis that the cheques may be presented again for payment.

88. These claimants also seek compensation for related losses, including increased costs and lost profits arising from the loss of the cheques. Claims for increased costs include, for example, the cost of reprinting new cheques to replace the stolen ones, staff and auditing costs to identify the lost cheques, and settlement cheques returned by other banks because of frozen Kuwaiti accounts and associated collection fees.

89. Finally, one of the claimants seeks compensation both for the actual loss of profit that it would have earned on the stolen traveller's cheques and the anticipated profit on the funds used as payment to cover the stolen traveller's cheques.

(ii) Compensability

90. The Panel finds that the claimants' payments of traveller's cheques that were lost or stolen in Kuwait constitute a loss directly caused by Iraq's invasion and occupation of Kuwait. Such claims are compensable in principle.

91. With respect to lost traveller's cheques that are still outstanding, the Panel finds that a loss, albeit a future one, is compensable if it is certain. The claimants have not provided sufficient evidence to establish that they will sustain an actual loss at some point. The Panel therefore finds that these portions of the claims are not compensable.

92. As regards lost or stolen traveller's cheques that were presented to the claimant's agents but that the claimant refused to pay, the Panel finds that the claimant has not suffered an actual loss. Moreover, the claimant has not established that it would have to honour the cheques if they were presented again for payment. Therefore, this portion of the claim is not compensable.

93. As regards the claims for increased costs, including mitigation expenses incurred by the claimants in respect of the lost or stolen traveller's cheques, the Panel finds that they are losses directly arising

from Iraq's invasion and occupation of Kuwait and are compensable in principle.

94. Finally, with respect to the claim for the loss of profits that the claimant would have earned on the stolen traveller's cheques, the Panel finds that these losses are compensable in principle. 33/

(b) Traveller's cheques lost in transit

95. One claimant bank based in Egypt, as part of its normal course of business, paid its merchant customers in 1985 for traveller's cheques issued by Rafidain Bank. To obtain reimbursement from Rafidain Bank, the claimant sent the cheques in 1985 for collection from Rafidain Bank. The cheques were lost while in transit and the claimant, alleging that it was not reimbursed by Rafidain Bank, now seeks compensation for the sums paid to its customers.

96. The Panel notes that the claimant's alleged damages occurred in 1985, when the cheques were lost while being sent for collection from Rafidain Bank. The Panel therefore concludes that the claimant's alleged loss is based on obligations of Rafidain Bank that were outstanding well in advance of Iraq's invasion of Kuwait, and accordingly the claim is not compensable under the "arising prior to" clause. 34/

2. Guarantee in favour of an Iraqi party

(a) Claim description

97. One claimant is a Belgian transport company which entered into an agency contract in December 1984 with an Iraqi state company under which the Iraqi company acted as the claimant's forwarding agent for cargo arriving in Iraq. The agency contract required the claimant to provide an unconditional guarantee in favour of the Iraqi company to cover the claimant's financial obligations. The claimant's bank provided the guarantee.

98. The agency agreement was extended annually until 2 August 1990. The claimant alleges that, although it is not aware of any outstanding amounts under the agency contract, the Iraqi state company and its bank, Rafidain Bank, refuse to release the guarantee. The claimant seeks compensation for the amount of the guarantee and the yearly commissions charged by its own bank for provision of the guarantee from 1990 to 1993.

(b) Compensability

99. As regards the amount of the guarantee itself, the claimant has not shown that it made any payments or suffered any loss. Accordingly, the Panel finds that the claim is not compensable.

100. Regarding the claim for commissions paid on the guarantees, the Panel finds that the portion of the 1990 commission corresponding to the period of Iraq's invasion and occupation is compensable because the claimants paid

that portion in advance and could not recover it despite the suspension of the underlying agency agreement. However, the Panel finds that the claimant's further extension of the guarantee and the accompanying payment of commissions in subsequent years was the result of its independent business decisions and consequently is not compensable.

3. Bank accounts

101. Some claimants deposited funds in bank accounts in Iraq and Kuwait in connection with their operations as, respectively, banks, airlines, and various financial institutions. The claimants allege that they have not been able to regain control of these funds from the date of Iraq's invasion of Kuwait until the present time.

(a) Bank accounts in Iraq

102. An Egyptian bank alleges that its account with Rafidain Bank was used in connection with transfers of funds of Egyptian workers in Iraq. Another Egyptian claimant, engaged in air transportation services, states that the sums in its accounts with Rafidain Bank and Rasheed Bank represented the sale proceeds of its airline tickets in Iraq. A claimant from the United States, which provides credit card services, alleges that its Iraqi dinar account was used to pay Iraqi service establishments for charges made by its credit card members.

103. The Panel recalls the determination in its first report that claims for funds held in Iraqi banks are compensable if the claimant had a reasonable expectation that it could transfer the funds outside Iraq, while such claims are not compensable if the funds were not exchangeable for foreign currency. 35/ In the claims under review, the Panel finds that the two Egyptian claimants have shown through previous practice that they had a reasonable expectation that they would eventually be able to transfer the funds outside Iraq, and the claims are therefore compensable. 36/ With respect to the third claim, the Panel finds that the claimant has failed to provide evidence of the nature of the account or of any right to transfer the funds outside Iraq; and, as a result, this claim is not compensable.

(b) Bank accounts in Kuwait

104. One claimant alleges that it was required to deposit funds in a non-interest-bearing United States dollar account with a Kuwaiti bank as security for guarantees given by its Kuwait office to various Kuwaiti government entities. The claimant closed its Kuwait office in December 1990. The claimant alleges, however, that it was unable to file an application to cancel its business license and the related guarantees until 1992, due to the lingering turmoil in Kuwait; and that although Kuwaiti law provides for a two-year process for the cancellation of licenses and return of deposits, its funds were not released until August 1995, that is, nearly three years after its application. The claimant seeks compensation for "the opportunity cost of holding the funds in a non-interest-bearing

account" from 1990 to 1995, and for the commission charges deducted by the Kuwaiti bank.

105. As regards the first part of the claim, the Panel finds that in view of the two-year waiting period normally imposed by Kuwaiti law for the return of funds and the claimant's delay in filing its application until 1992, the period during which the claimant was deprived of the use of its funds as a direct result of Iraq's invasion and occupation of Kuwait was eight months. 37/ The Panel finds all other delays in the return of the claimant's funds were substantially due to causes other than Iraq's invasion and occupation of Kuwait. 38/

106. With respect to the claim for commission charges, the Panel further finds that the claimant has failed to present sufficient evidence of the direct relationship between the charges incurred and Iraq's invasion and occupation of Kuwait.

D. Non-contractual losses

107. Several banks and financial institutions allege that they suffered various types of losses due to the impact of Iraq's invasion and occupation on the Middle East generally, and on their own business operations in particular.

1. Decline in business and course of dealing

(a) Claims description

108. A number of claimants, based or having had an office or branch in Kuwait, Iraq, Bahrain, or Tunisia on 2 August 1990, allege that their business operations in these locations suffered a decline in revenue during the period of Iraq's invasion and occupation of Kuwait and in some instances after that period. These claims are described below on the basis of the geographical area where the claimants suffered the alleged loss.

109. Five claimants provided investment, credit card, and insurance services to the Kuwaiti market through branches or offices in Kuwait. The claimants allege that after Iraq invaded Kuwait they were forced to suspend operations and that their businesses in Kuwait ceased or were substantially interrupted throughout the period of Iraq's occupation. These claimants generally seek compensation for lost profits for that period and, in some cases, for up to one year after the date of the liberation of Kuwait. One of these claimants alleges that it closed its office permanently in December 1990. Another one alleges losses from the decline in revenue of its credit card business in both Kuwait and Iraq. Yet another claimant, a bank based in India, seeks compensation for the fees that it would have earned on a management contract to provide personnel and other services to a company based in Kuwait.

110. A bank based in Bahrain alleges that it was required to downsize its operations as a result of the liquidity crisis in the Middle East and the

general perception of economic uncertainty in the region. The claimant maintains that these circumstances affected its ability to obtain funding at pre-invasion levels, thereby reducing the revenue that it normally would have earned between August 1990 and December 1991.

111. Two claimants are banks located in Tunisia which provided loans and other financial services to Tunisian companies and individuals at the time of Iraq's invasion of Kuwait. One of them primarily provided financing for projects in the Tunisian tourism sector. This claimant alleges that a decline in income due to the reduction in tourism caused by Tunisia's proximity to Kuwait prevented the borrowers from repaying the loans. The other claimant is a Tunisian-Kuwaiti joint venture whose board of directors included Kuwaiti nationals. The claimant alleges that Iraq's invasion and occupation of Kuwait prevented the Kuwaiti directors from attending any of the board meetings in 1991 and one meeting in 1992, and that the absence of a quorum prevented the board from approving funding for projects that thereby were frustrated.

(b) Compensability

112. In its second report, the Panel defined the area within which a claim for decline in business is eligible for compensation (the "compensable area"). The compensable area includes geographic locations that were the subject of military operations or the threat of military action within the meaning of paragraph 21 of decision 7. In its third report, the Panel further defined the geographic and temporal scope of the compensable area. 39/ These findings were summarized in a table that is reproduced in relevant part below:

Location	Period
Iraq	2 August 1990 - 2 March 1991
Kuwait	2 August 1990 - 2 March 1991
Saudi Arabia (within the range of Iraq's scud missiles)	2 August 1990 - 2 March 1991
Bahrain	22 February - 2 March 1991

113. The Panel also must determine whether to award compensation for losses that continued to be felt after 2 March 1991 (a "secondary compensation period" or "recovery period"). This issue has already been considered by this and other panels for claims similar to those under review. 40/ With regard to banks and financial institutions in Kuwait, the "E4" Panel has determined the appropriate recovery period to resume normal operations in Kuwait after the end of Iraq's occupation to be five months. The Panel adopts the "E4" Panel's findings, and recognizes a similar recovery period. 41/

114. In its third report, the Panel also distinguished between those claimants which maintained a presence in a compensable area by way of a branch, agency or other establishment, and those which did not. The Panel

determined that, where a claimant based outside the compensable area maintained a presence within that area, claims for decline in business are compensable "for profits which, in the ordinary course of events, [the claimant] would have been expected to earn and which were lost as a result of a decline in business directly caused by Iraq's invasion and occupation of Kuwait". 42/

115. Where the claimant did not maintain a presence in the compensable area, the Panel concluded that the claim is to be evaluated under the evidentiary standards of paragraph 11 of Governing Council decision 9. 43/ As the Panel has previously noted, a claim for decline in business is compensable under paragraph 11 where the claimant shows that:

> "there was a regular course of dealing with another party, demonstrating that the claimant had a well-founded expectation of further business dealings of the same character with the same party under readily ascertainable terms and, in addition, that a consistent level of income and profitability had been realized from such dealings." 44/

116. With respect to claims for decline in business in Kuwait and Iraq, the Panel finds that such claims are compensable in principle subject to the claimant's presenting sufficient proof to substantiate its loss. The Panel finds that the claimant seeking to recover losses suffered from the decline in its credit card activities in Kuwait and one of the claimants providing financial information services have provided sufficient evidence to substantiate their losses. The Panel finds that the remaining claimants referred to in paragraph 109 have failed to provide sufficient evidence to substantiate their alleged declines in business.

117. With respect to claims for decline in business in Bahrain, the Panel found in its third report that Bahrain was affected by military operations from 22 February 1991 until 2 March 1991. Consequently, the Panel awarded compensation for losses caused by the cancellation of shipping operations in the area from 22 February to 2 March 1991. 45/ In the present instance, however, the claimants' alleged difficulty in obtaining funding arose early in the period of Iraq's invasion and occupation of Kuwait. Hence, the alleged damage was not a direct result of Iraq's invasion and occupation, but rather a result of the general uncertainty in the region. Moreover, there is no evidence that the claimant's alleged damages materially increased during the ten days of military operations affecting Bahrain. Accordingly, the claim is not compensable.

118. Regarding claims for decline in business by banks in Tunisia, the alleged losses were not incurred within a compensable area as defined in paragraph 112 above. 46/ The Panel further finds that the claimants have failed to make the necessary special showing, stated above in paragraph 115, regarding a regular course of dealing and expectation of future business; therefore, such claims are not compensable.

2. Sale of assets at a loss

(c) Claims description

119. A claimant based in Bahrain and engaged in the offshore banking industry alleges that as a result of Iraq's invasion and occupation of Kuwait, it suffered a liquidity crisis when its depositors withdrew their funds and it was not able to secure alternative funding from Middle Eastern and international sources. The majority of the withdrawals took place between August 1990 and December 1990. To bridge its shortage of liquid assets, the claimant alleges that it was forced to sell marketable securities and loan portfolios between August and December 1990 at a price lower than their book value.

120. Another claimant bank, located in Bahrain, purchased shares in two Kuwaiti companies for investment purposes mainly in June 1990, and states that its normal practice would have been to sell these shares after one year. The claimant alleges, instead, that it had to hold the shares until 1994 because Iraq's invasion and occupation of Kuwait caused the shares to decline in value. The claimant seeks compensation for the difference between the last available market price of the shares on 27 June 1990 before Iraq's invasion and occupation of Kuwait and the eventual sale price in 1994.

(d) Compensability

121. With respect to the claim described in paragraph 119, the Panel recalls the findings summarized in paragraph 112 above, that military operations were felt in Bahrain from 22 February 1991 until 2 March 1991. 47/ In the claim under review, the claimant's sale of its financial assets took place from August 1990 to December 1990, which is before the period when Bahrain was affected by military operations. Further, the Panel finds that the liquidity gap suffered by the claimant in the region was a result of its depositors' responses to the general economic situation in the region. Therefore, the claimant's losses are not direct losses within the meaning of Security Council resolution 687 (1991), and the claim is not compensable. 48/

122. With respect to the claim described in paragraph 120, the Panel notes that many factors may have affected the value of the two companies' stock. The Panel finds, in this case, that the claimant has failed to prove that its loss was the direct result of Iraq's invasion and occupation of Kuwait, rather than other market factors, and the claim is not compensable.

3. Decline in value of a claimant's security for a loan

123. One claimant is a bank based in Bahrain which participated in a syndicated loan made in 1982 to a Kuwaiti borrower; the loan was secured by a mortgage over the borrower's land and buildings in Kuwait. The borrower failed to pay the amounts due in 1984 and the claimant alleges that the value of the mortgaged property depreciated as a direct result of Iraq's

invasion and occupation of Kuwait. The claimant seeks compensation for the difference between the value of the properties in June 1990, before Iraq's invasion and occupation, and July 1998. 49/

124. The claimant has not actually sold or foreclosed the mortgaged property. Accordingly, the Panel determines that the claimant has failed to show that it has suffered an actual loss and the claim is therefore not compensable.

4. Increased costs

125. Several claimants are banks and financial institutions operating in Kuwait, Bahrain, and Saudi Arabia which allege that they incurred various additional costs relating to their employees as a result of Iraq's invasion and occupation of Kuwait. They also allege that additional costs were incurred in connection with their office premises.

(a) Salaries and termination payments

(i) Claims description

126. Various claims involve salaries paid to unproductive employees in Kuwait after the claimant had suspended or had limited its operations. One claimant seeks compensation for the salary of staff in Bahrain, and for those temporarily relocated to its London branch as part of the claimant's "overall disaster recovery plan" following Iraq's invasion and occupation of Kuwait.

127. Several claimants with offices in Kuwait seek compensation for termination indemnities paid to employees who were unable or unwilling to return to Kuwait after Iraq's invasion and occupation. Another claimant seeks compensation for termination payments made to employees in Bahrain, as well as in its offices in London, Singapore and New York, as part of cost-saving measures resulting from the reduced profitability of its Bahrain head office following Iraq's invasion and occupation of Kuwait.

(ii) Compensability

128. In its first report, the Panel determined that salary payments to unproductive staff are compensable to the extent that the lack of productivity was a direct result of Iraq's invasion and occupation of Kuwait. It also found that salary payments made to unproductive staff after their evacuation are compensable only where the employee could not be reassigned to other productive tasks. 50/ In its third report, the Panel found that where the claimant terminated employment rather than incur unproductive staff expenses, contractually or legally required early termination expenses are compensable in principle. 51/

129. As regards those claims based on unproductive salaries and termination payments in Kuwait, the Panel finds that such expenses were

incurred as a direct result of Iraq's invasion and occupation of Kuwait and claims based on these expenses are compensable in principle.

130. As regards those claims based on unproductive salaries and termination payments in Bahrain and associated offices located elsewhere, the Panel determines that the compensable period for Bahrain is too short to justify salary and termination payments to non-productive employees in these locations. The Panel therefore finds that such expenses were not incurred as a direct result of Iraq's invasion and occupation of Kuwait and consequently, claims based on these expenses are not compensable.

(b) Additional staff costs

(i) Claims description

131. Other claimants made additional payments to their employees during Iraq's invasion and occupation of Kuwait. Two claimants with head offices in the United States made additional payments to their Kuwait office employees as incentives to continue working in Kuwait during Iraq's occupation. Another claimant paid a "loyalty allowance" to its employees in several of its Saudi Arabian offices during Iraq's occupation of Kuwait. A fourth claimant paid benefits to its key expatriate employees in Bahrain during Iraq's occupation of Kuwait. Lastly, a claimant bank based in Bahrain paid the airfare and other travel expenses of its senior staff sent to London in November 1990 for the purpose of "discuss[ing] the position" of the claimant's Kuwait branch with officials of the Central Bank of Kuwait and other Kuwaiti banks that had relocated to London.

(ii) Compensability

132. The Panel recalls its findings in its third report that additional payments to staff are compensable "where related to the compensable area and periods" and to the extent that they are reasonable in amount. 52/

133. Therefore, with respect to the additional payments to employees in Kuwait and in locations in Saudi Arabia within Iraq's scud missile range, the Panel finds that these payments are compensable in principle, insofar as they are reasonable in amount. With respect to additional payments made to employees in Bahrain, the Panel finds that Bahrain was not affected by military action for a period long enough to render compensable the additional payments to employees in this area. Therefore, additional payments made to employees in Bahrain are not compensable.

134. With respect to the Bahraini bank's claim for travel expenses to London of its senior staff, the Panel finds that with respect to the particular circumstances of the claim, the claimant's need to discuss the situation of its Kuwaiti branch with Kuwaiti officials then located in London was an increased cost of operations directly resulting from the invasion and occupation of Kuwait. Inasmuch as the costs incurred are reasonable, the Panel determines that this claim is compensable in principle.

(c) Advance payments for rent and other services

135. Some claimants that maintained offices in Kuwait were forced to cease their operations in Kuwait during the period of Iraq's invasion and occupation. These claimants already had made advance payments covering the period between 2 August 1990 and 2 March 1991 for rent and other services, such as document storage, photocopying and utilities. They claim compensation for the loss of the benefit of these services.

136. In its third report, the Panel determined that advance rental payments in the case of businesses are best considered within a loss of profits claim. 53/ In some instances, however, as is the case with the present claims, the manner in which the claims are presented makes it infeasible to value a claim for advance rental payments as an element of a loss of profits claim. In such instances, it is the view of the Panel that the advance payment of rent created an entitlement to the use of an asset, and the claims for advance rental payments are compensable if the claimant's "inability to receive the benefit of the amounts paid in rent during the relevant period was the direct result of Iraq's invasion and occupation". 54/ The Panel finds that in the claims under review, the claimants were unable to enjoy the benefit of the advance payments for rent and other associated services in Kuwait when they were forced to cease their operations in Kuwait as a direct result of Iraq's invasion and occupation of Kuwait. The claims are therefore compensable in principle.

(d) Legal fees other than claim preparation costs

137. A claimant with an office in Kuwait leased its business premises from a Kuwaiti company. After the liberation of Kuwait, the lessor sued the claimant in Kuwait for rent covering the period that included Iraq's invasion and occupation. The lessor's claim was eventually dismissed; the claimant now seeks compensation for legal fees that it incurred in its defence.

138. The Panel finds that the claimant's legal fees were incurred as a direct result of the suit instigated against it by the Kuwaiti company. The claimant's payment of such fees therefore cannot be said to be a direct result of Iraq's invasion and occupation, and are not compensable. 55/

(e) Post-liberation start-up costs in Kuwait

139. A Bahraini claimant alleges that it operated in Kuwait before Iraq's invasion and occupation forced it out of the country. The claimant seeks compensation for costs incurred in re-establishing its Kuwait office, including the cost of airfare, hotel accommodations for staff, and training costs for replacement staff.

140. In its first report, the Panel found that a claim for "restart expenses" incurred by a contractor after Iraq's departure from Kuwait was not compensable because the claimant failed to demonstrate that the claimed expenses were "other than the ordinary expenses incurred as part of an

ongoing business enterprise". 56/ Applying this principle to the present claim, the Panel finds that the claimant has failed to demonstrate that the salaries and training costs of replacement staff in question are other than ordinary expenses that would have been incurred by the claimant as part of its normal business operations and therefore the present claim is not compensable. However, the Panel finds that the claimant's costs of airfare and hotel accommodations constitute extraordinary expenses that were incurred as a direct result of Iraq's invasion and occupation of Kuwait, and therefore this claim is compensable in principle.

5. Payment or relief to others

141. Several claimants with offices in Kuwait, Saudi Arabia, Bahrain and Greece allege that they made payments or incurred additional expenses in providing relief to their employees or to other businesses as a result of Iraq's invasion and occupation of Kuwait. These payments or expenses include reimbursements to employees, security measures, and evacuation costs.

(a) Reimbursement for personal property losses

142. A number of claimants with offices in Kuwait compensated their Kuwait office employees for personal property that was lost or damaged in Kuwait during the period of the invasion and occupation.

143. The Panel refers to its findings in its third report, that such payments made by claimants are compensable in principle, "where [they] were made pursuant to legal obligations or otherwise appear justified and reasonable under the circumstances". 57/ The Panel finds that the claims for reimbursement for the employees' personal property losses meet these criteria, and are therefore compensable in principle.

(b) Security measures, including gas masks

144. Several claimants with offices in Saudi Arabia, Bahrain and Greece incurred costs to protect their offices from risks associated with Iraq's invasion and occupation of Kuwait. The claimants paid for security and protective measures for their staff, such as gas masks, and for their offices in Bahrain, in the form of microfiche, photocopying, and courier services to transfer documents to offices outside the Middle East.

145. The Panel has previously determined that the cost of reasonable measures designed to protect the lives of employees incurred by an office located in a compensable area is compensable in principle. In particular, the Panel refers to its findings in its third report that claims for purchasing gas masks in Saudi Arabia are compensable in principle. 58/ With respect to the purchase of gas masks in Bahrain, the Panel determines that such costs for personal safety are compensable given the later effect of military operations in the area. 59/ The claim based on the purchase of gas masks in Greece is not compensable, however, as Greece is outside the compensable area. Further, with respect to additional expenses for

security measures for the claimants' offices in Bahrain not related to personal safety, the Panel finds that the costs incurred in the present claims are not compensable in light of the lack of a specific threat to Bahrain and the limited period during which Bahrain was affected by military action. Accordingly, this portion of the claim is not compensable.

(c) Evacuation costs

146. Other claimants that evacuated employees from their offices in Kuwait, Saudi Arabia and Bahrain, claim for expenses such as travel and accommodations.

147. In its third report, the Panel determined that evacuation costs are compensable if actual military operations took place in, or a threat of military action was directed at, the country from which persons were evacuated. 60/ The Panel also found that compensable evacuation costs comprise those costs incurred for transport, accommodation, food and urgent medical treatment. However, only "temporary and extraordinary" evacuation expenses related to the repatriation of employees and which would not have been incurred by a claimant in any event (for example, in repatriating foreign staff at the end of a contract) are compensable. 61/

148. Therefore, costs incurred for the evacuation of employees from a compensable area and within the compensable period, in this instance Kuwait, Saudi Arabia and Bahrain (for the short time that it was affected by military operations), are compensable in principle to the extent that such costs are "evacuation costs" within the scope of the definition stated in the preceding paragraph.

(d) Benefit provided to displaced Kuwaiti company

149. One claimant bank based in Bahrain provided office space free of charge for 15 months, from October 1990 to December 1991, to a Kuwaiti company whose staff was forced to leave Kuwait after Iraq's invasion. The claimant seeks compensation for the monthly rent that it would have earned from leasing the office space under normal conditions.

150. The Panel finds that the claimant's decision to provide office space free of charge to the Kuwaiti company represents an independent business decision. Consequently its alleged loss of the monthly rent on its office premises was not a direct result of Iraq's invasion and occupation of Kuwait and the claim is not compensable.

6. Tangible property in Iraq and Kuwait

151. Several claimants with offices in Kuwait seek compensation for tangible property that was lost or destroyed at their premises in Kuwait during the period of Iraq's occupation. Two other claimants seek compensation for bank notes that were allegedly looted in Kuwait airport during the invasion. The claimants had sent the bank notes by air to their

agents in Kuwait. The bank notes arrived in Kuwait airport on the evening of 1 August 1990, where they allegedly were stolen from a safe at the cargo terminal during Iraq's invasion.

152. The Panel recalls the determinations in its previous reports, that lost property claims are compensable in principle if the record shows that the claimant's assets were in Kuwait as of 2 August 1990 and such assets were lost or destroyed during Iraq's invasion and occupation. 62/ As to the claims for lost or damaged property, other than cash, the Panel finds the claims are compensable in principle. As to claims for the loss of cash, a high level of scrutiny is applied because of the greater potential for fraudulent claims. 63/ With respect to these claims, the Panel finds that the record meets the higher standard and clearly supports the allegations of the claimants. Therefore, these claims also are compensable in principle.

V. INCIDENTAL ISSUES

A. Date of loss

153. The Panel must determine "the date the loss occurred" for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars, and with respect to the awarding of interest at a later date in accordance with Governing Council decision 16. The Panel has been guided by its findings in its previous three reports, as well as the findings of other Panels. The date when the loss occurred depends most significantly on the character of the loss, and the following paragraphs address each loss type in turn.

154. With respect to the claims based on contract losses in this instalment, the Panel notes that the date of loss for each contract normally would depend on the facts and circumstances surrounding the non-performance of the contract. 64/ However, given the large number of contracts before the Commission and the significance of one event (i.e., Iraq's invasion of Kuwait) on contractual relations, the Panel finds, as it did in its third report, that 2 August 1990 represents an appropriate and administrable date of loss for the contract claims now under consideration. 65/

155. With respect to claims for decline in business leading to loss of profits or claims for increased costs, the Panel notes that such losses in this instalment were suffered over extended periods of time, and that such losses were generally spread over the period of loss. Given these circumstances, the Panel selects the mid-point of the relevant compensable period (including potential relevant primary or secondary periods, as the case may be) during which the particular loss occurred as the date of loss. 66/

156. With respect to claims for payment or relief to others, including evacuation costs, the Panel notes that such losses likewise have been incurred throughout the compensable period applicable to the geographic area for which the costs were incurred and, therefore, the Panel selects the mid-point of the compensable period as the date of loss for costs of this nature, that is, 15 November 1990. 67/

157. With respect to claims for loss of tangible assets, the Panel selects 2 August 1990 as the date of loss as that date generally coincides with the claimant's loss of control over the assets in question in this instalment. 68/

B. Currency exchange rate

158. Many of the claimants have advanced claims in currencies other than United States dollars. The Panel has assessed all such claims and performed all claim calculations in the original currencies of the claims. Since the Commission issues its awards in United States dollars, the Panel must determine the appropriate rate of exchange to be applied to claims

where the losses are alleged in other currencies. The Panel has been guided by its previous decisions, and by decisions of other Panels. A particular rule is established for Kuwaiti dinars, and is set forth in paragraph 164.

159. Noting that all prior Commission compensation awards have looked to the United Nations Monthly Bulletin of Statistics (the "UN Monthly Bulletin") for determining commercial exchange rates into United States dollars, the Panel adopts that source for the data to be utilized in exchange rate calculations. The Panel notes that the UN Monthly Bulletin provides a monthly figure for each currency which reflects the average exchange rate for that currency for the last day of the month in question.

160. For claims based on contract losses in this instalment, the Panel, noting that the date of loss set forth in paragraph 154 for such claims is 2 August 1990, adopts the last available exchange rate unaffected by Iraq's invasion and occupation of Kuwait, as reported in the UN Monthly Bulletin.

161. For claims for decline in business leading to loss of profits and claims for increased costs, the Panel decides that the appropriate rate will be the average of the rates reported in the UN Monthly Bulletin for the months over which the particular claimant is compensated. 69/

162. For claims for payment or relief to others within this instalment, including evacuation costs and security measures, the Panel, noting that the date of loss set forth in paragraph 156 for such claims is 15 November 1990 and consistent with the decision of the "F1" Panel, decides that the appropriate rate will be that rate reported in the UN Monthly Bulletin for the month of November 1990. 70/

163. For claims for the loss of tangible assets, the Panel, noting that the date of loss set forth in paragraph 157 for such claims is 2 August 1990, adopts the last available exchange rate unaffected by Iraq's invasion and occupation of Kuwait, as reported in the UN Monthly Bulletin.

164. The above rules apply to claims stated in currencies other than the Kuwaiti dinar. For claims denominated in Kuwaiti dinars, the Panel, noting the extreme fluctuation in the value of that currency during the period of occupation of Kuwait and the earlier decisions of this and other Panels, adopts the rate of exchange for 2 August 1990, namely the last available exchange rate unaffected by Iraq's invasion and occupation of Kuwait, as reported in the UN Monthly Bulletin. 71/

C. Interest

165. Governing Council decision 16 states that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". The Governing Council further specified that it would consider the method of calculation and of payment of interest

at a later date and that "[i]nterest will be paid after the principal amount of awards".

166. With respect to the awarding of interest in accordance with Governing Council decision 16, the Panel notes that the dates of loss defined in paragraphs 154 to 157 above may be relevant to the later choice of the dates from which interest will accrue for all compensable claims.

D. Claims preparation costs

167. In a letter dated 6 May 1998, the Executive Secretary of the Commission advised the Panel that the Governing Council intends to resolve the issue of claims preparation costs at a future date. Accordingly, the Panel takes no action with respect to claims for such costs.

VI. RECOMMENDATIONS

168. Based on the foregoing, the Panel recommends that the amounts set out in annex II below be paid in compensation for direct losses suffered by the claimants as a result of Iraq's unlawful invasion and occupation of Kuwait.

Geneva, 14 April 2000

(Signed) Mr. Bernard Audit
Chairman

(Signed) Mr. José María Abascal
Commissioner

(Signed) Mr. David D. Caron
Commissioner

Notes

1/ E2(1) report, paras. 38-48.

2/ Two claimants do not fit this description, having been transferred from a previous instalment. See E2(3) report, annex I.

3/ See, for example, E2(3) report, paras. 175-179 (verification procedures); 180-182 (general methodology); 198-199 (contract losses); 200-201 (evacuation costs); 202 (payment or relief to others); 203-207 (tangible property and cash). See also E2(2) report, paras. 146-152 (decline in business).

4/ E2(1) report, para. 90.

5/ Ibid., para. 86.

6/ Ibid., para. 95.

7/ See, for example, E2(1) report, para. 72.

8/ As the Panel noted, "The rescheduling of such old debts perhaps renewed them under applicable law, but did not make them new debts in the sense of resolution 687 (1991)." E2(1) report, para. 87.

9/ The Panel notes that in some claims, for example, the syndicated loan described in paragraph 39 infra, the initial loan itself called for payment of some instalments after 2 May 1990. Even if the Commission's jurisdiction in such a case turned on the date of repayment of the loan, a decision reserved by the Panel in paragraph 20, the Panel finds that the fact that some instalments of the initial loan fell due after 2 May 1990 does not bring any part of a rescheduled loan within the jurisdiction of the Commission, as a loan transaction must be viewed as a whole between the parties.

10/ Indeed, if, for jurisdictional purposes, the Panel did not treat in the same manner the guarantor's and the debtor's respective obligations, the loans under review that are otherwise excluded under the "arising prior to" clause of Security Council resolution 687 (1991) would, in effect, be brought within the Commission's jurisdiction by a claim based on the guarantee.

11/ Under general principles governing documentary credits, if a bank has been authorized by the issuing bank to pay the beneficiary and such bank properly makes payment, the issuing bank must reimburse the paying bank. See Article 10 of the Uniform Customs and Practice for Documentary Credits (1983 revision), ICC Publication No. 400 (hereinafter the "UCP"); article 16, UCP (discussing a paying bank's right to reimbursement).

12/ The relationship between the issuing bank and the beneficiary of a letter of credit is detailed by the E2A Panel in the E2(4) report, paras. 91-94.

13/ The E2A Panel concluded that the beneficiary-exporter may bring a claim before the Commission based upon the obligation of the Iraqi bank to honour the letter of credit used to finance the sale of goods. See E2(4) report, para. 91.

14/ See E2(1) report, para. 90, regarding performance under construction and supply contracts.

15/ E2(4) report, paras. 92-96.

16/ The Panel considers proof of payment by the claimant to the exporter to be sufficient evidence of its presentation of the documents to the issuing bank.

17/ There is no basis to distinguish between Iraqi private and public parties for the purpose of the Commission's jurisdiction over debts and obligations arising prior to 2 August 1990. See E2(4) report, paras. 86-87; E2(3) report, paras. 106-108.

18/ The Panel notes that most of the loans in the claims described in paragraphs 42 to 44 were rescheduled and therefore would be, in any event, outside the Commission's jurisdiction on that basis.

19/ See note 16, supra, with respect to the evidence sufficient to establish the date of the claimant's presentation of documents to the issuing bank.

20/ See para. 30.

21/ E1(3) report, para. 208; E3(1) report, para. 426; E3(4) report, paras. 449-450. See also E4(3) report, paras. 56-57 and 66. The Panel further observes that, since these notes were substantially past due as of 2 August 1990, the requisite causal link between the non-payment and Iraq's invasion and occupation of Kuwait is not established, and the claims are therefore not compensable for this additional reason.

22/ With respect to claims otherwise within the Commission's jurisdiction, the Panel notes the conclusion of the E2A Panel that the non-payment of goods or services by Iraqi purchasers between 2 August 1990 and 2 August 1991 was generally a direct result of Iraq's invasion and occupation of Kuwait. See E2(4) report, paras. 115-119.

23/ The payment in Iraqi dinars was made possible by a resolution issued by the Iraqi Revolution Command Council on 26 September 1990, which withdrew the Kuwaiti currency from circulation and decreed that borrowers should pay their obligations in Iraqi dinars at the rate of one Iraqi dinar to one Kuwaiti dinar. See also E4(4) report, para. 96.

24/ A judgement in the claimant's favour with respect to Loan 2 is pending on appeal. Given the presence of at least two separate judgements in the claimant's favour, the Panel notes the continuing duty of all claimants to advise the Commission of the recovery of compensation.

25/ Governing Council decision 7, para. 21 (c).

26/ The Panel likens this situation to the consequences of the breakdown of civil order in Kuwait, which created circumstances that allowed property in Kuwait to be looted by third parties.

27/ In this instance, however, the Panel finds no evidence of a loss sustained by the claimant in excess of the amount of the settlement agreement. See annex II.

28/ E2(1) report, para. 145. The Panel further observed:

> "Adequate proof that a contracting party's inability to perform resulted from Iraq's invasion and occupation of Kuwait would include a showing that performance was no longer possible, for example because the contracting party, in the case of an individual, was killed, or in the case of a business, ceased to exist or was rendered bankrupt or insolvent, as a result of Iraq's invasion and occupation of Kuwait." Ibid.

29/ See E4(1) report, para. 214; E3(2) report, para. 115; E2(4) report, para. 136.

30/ E2(1) report, para. 145.

31/ Paragraph 10 of Governing Council decision 9 requires the Panel to consider whether the parties could have resumed the transaction after the cessation of hostilities subsequent to the lifting of the trade embargo on 3 April 1991. The Panel finds that such a resumption was not possible where, as here, the claimant already had disposed of the goods to a third party in an effort to mitigate its losses. E2(4) report, para. 150.

32/ The claimants generally allege that when the cheques were presented, no obviously suspicious circumstances were apparent to justify refusal of payment.

33/ In valuing the claim, the Panel has been careful to avoid potential duplication of recovery by the claimant for the same loss, and in particular, has ensured that the claimant has not filed a separate decline in business claim.

34/ The Panel further notes that the claimant's alleged damages, stemming from the loss of the cheques in the circumstances described by the claimant, in any event, cannot be said to be a direct result of Iraq's invasion and occupation of Kuwait.

35/ E2(1) report, paras. 136-140. See also E2(3) report, para. 169.

36/ The Panel recognizes that the airline claimant would have applied some funds to meet local expenses, such as salaries of local employees and other office expenses in Iraq, and accordingly, a portion of the funds that would have been locally used and is still available to the claimant is not compensable. See E2(3) report, para. 169.

37/ The Panel refers to the determination in its third report that a compensable loss may arise for the principal amount where the claimant was denied access to the funds as a direct result of Iraq's invasion and occupation, despite having complied with the requirements of the Central Bank of Kuwait. See E2(3) report, para. 170; see also D(2.1) report, para. 99; F1(1.1) report, para. 82.

38/ In view of the fact that the F3 Panel has before it an extremely large claim for compensation that raises similar issues, the Panel defers further consideration of this portion of the present claim until the F3 Panel has rendered its recommendations.

39/ See, e.g., E2(3) report, para. 77.

40/ See, for example, E2(2) report, paras. 139-143.

41/ See generally, E4(1) report, paras. 182-187.

42/ E2(3) report, para. 101; see also E2(2) report, para. 78.

43/ E2(3) report, para. 103.

44/ Ibid., para. 105.

45/ Ibid., paras. 69-70, 126.

46/ E2(2) report, para. 117; E2(3) report, para. 76.

47/ E2(3) report, paras. 69-70.

48/ See also E4(3) report, paras. 23-26.

49/ Legal proceedings filed by some members of the syndicate in 1994 to obtain possession of the mortgaged properties are still pending.

50/ E2(1) report, paras. 213-215, 237-238.

51/ E2(3) report, para. 161.

52/ Ibid., para. 100.

53/ Ibid., para. 158.

54/ Ibid., paras. 157-158; see also E2(1) report, para. 234.

55/ The Panel notes that claims for legal fees have been considered by other panels in a variety of contexts. Such legal fees have been awarded

under some circumstances (see e.g. E1(3) report, paras. 439-441), and rejected under others (see e.g. E1(3) report, paras. 483-486). The Panel concludes that the circumstances found by other panels to warrant the awarding of legal fees are not present here.

56/ E2(1) report, para. 239.

57/ E2(3) report, para. 162. The F1 panel also has decided that reimbursements for the loss of tangible property in Kuwait or Iraq pursuant to contractual obligations are compensable. See F1(1.1) report, paras. 67-68.

58/ E2(3) report, para. 147; see also paras. 61-63.

59/ E2(3) report, paras. 69-70.

60/ Ibid., para. 82, citing E2(2) report, para. 60 and F1(1.1) report, paras. 94-96.

61/ E2(3) report, para. 79, citing E3(1) report, paras. 177-178.

62/ E2(3) report, para. 167; E2(1) report, paras. 119-123.

63/ A high level of scrutiny is similarly applied with respect to valuation of such claims. See E2(3) report, para. 206; E4(1) report, para. 127.

64/ E2(3) report, para. 211.

65/ Ibid.

66/ Ibid., paras. 209-210.

67/ Ibid., para. 212.

68/ Ibid., para. 213.

69/ Ibid., para. 216.

70/ Ibid., para. 218; F1(1.1) report, para. 101.

71/ E2(3) report, para. 220.

Annex I

LIST OF REASONS STATED IN ANNEX II FOR DENIAL IN WHOLE OR IN PART OF THE CLAIMED AMOUNT

No.	Reason for denial or reduction of award	Explanation
1	"Arising prior to" exclusion	All or part of the claim is based on a debt or obligation of Iraq that arose prior to 2 August 1990 and is, thus, outside the jurisdiction of the Commission pursuant to Security Council resolution 687 (1991).
2	Part of all of loss is not direct	The type of loss, in whole or part, is in principle not a direct loss within the meaning of Security Council resolution 687 (1991).
3	Part or all of loss is outside compensable period	All or part of the loss occurred outside the period of time during which the Panel has determined that a loss may be directly related to Iraq's invasion and occupation of Kuwait.
4	Part of all of loss is outside compensable area	All or part of the loss occurred outside the geographical area within which the Panel has determined that a loss may be directly related to Iraq's invasion and occupation of Kuwait.
5	No proof of actual loss	The claimant has not established that any loss was suffered.
6	No proof of direct loss	The claimant has failed to submit sufficient evidence to demonstrate that the loss was a direct result of the invasion and occupation of Kuwait.
7	Non-compensable element of bank balance held in Iraq	A deduction is made to reflect that part of the funds that would have been expended locally by the claimant.
8	Part or all of the loss is unsubstantiated	Claimant has failed to file documentation substantiating its claim; or, where documents have been provided, these do not demonstrate the circumstances or amount of part or all of the claimed loss as required under article 35 of the Rules.
9	Failure to comply with formal filing requirements	The claimant has failed to meet the formal requirements for the filing of claims as specified under article 14 of the UNCC Provisional Rules for Claims Procedure.
10	Calculated loss is less than loss alleged	Applying the Panel's valuation methodology, the value of the claim was

No.	Reason for denial or reduction of award	Explanation
		assessed to be less than that asserted by the claimant.
11	Insufficient evidence of value	The claimant has produced insufficient evidence to prove all or part of the value of its losses, as required under article 35 of the Rules.
12	Reduction to avoid multiple recovery	Although the claim is found to be eligible, an award has already been made for the same loss in another claim before the Commission. Accordingly, the amount of compensation awarded in the other claim has been deducted from the compensation calculated for the present claim, in keeping with Governing Council decision 13, para. 3.
13	Claim preparation costs	The issue of claim preparation costs is to be resolved by the Governing Council at a future date.
14	Interest	The issue of methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time pursuant to Governing Council decision 16. Moreover, where the Panel has recommended that no compensation be paid for the principal amounts claimed, a nil award is recommended for interest claimed on such principal amounts.
15	Principal sum not compensable	Where the Panel has recommended that no compensation be paid for the principal amounts claimed, a nil award is recommended for interest claimed on such principal amounts.

Annex II

RECOMMENDED AWARDS FOR THE FIFTH INSTALMENT OF "E2" CLAIMS

No.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount d/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of Loss	Sub-category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
1	Austria	4000135	Krenek Transport-gesellschaft m.b.H.	ATS	34,424,941.00	3,130,109.20	Contract	Loans to Kuwaiti parties	ATS	2,672,530.00	237,558.22	N/A	Paras. 74-76	1,318,734.14
							Other tangible property	Office or other equipment	ATS	6,937,771.00	616,690.76	N/A	Paras. 151-152	
							Contract	Accounts receivables	ATS	18,310,760.00	464,485.16	No proof of direct loss.	Paras. 82-85	
							Interest	N/A	ATS	6,503,880.00	Awaiting decision	To be determined as per Governing Council decision 16.	Paras. 165-166	
2	Bahrain	4000080	Bank of Bahrain and Kuwait (B.S.C.)	BHD	2,146,229.00	5,708,055.85	Contract	Loans to Kuwaiti/non-Iraqi parties	BHD	1,180,748.75	711,532.01	No proof of direct loss; no proof of actual loss.	Paras. 68-72	717,743.44
							Contract	Loss in the value of collateral	BHD	812,582.00	0.00	No proof of actual loss; no proof of direct loss.	Paras. 123-124	
							Other tangible property	Losses on the sale of shares	BHD	35,641.00	0.00	Part or all of loss is not direct.	Paras. 120, 122	
							Business loss or course of dealing	Increased costs - additional staff costs	BHD	2,314.00	4,615.69	Insufficient evidence of value.	Paras. 131, 134	
							Payment or relief to others	Security or protective measures	BHD	4,852.00	1,595.74	Part or all of loss is not direct.	Paras. 144-145	

No.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount d/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of Loss	Sub-category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
							Other	Recovery expenses	BHD	20,000.00	0.00	Part or all of loss is unsubstantiated.	Para. 14	
							Claim preparation costs	N/A	BHD	5,197.00	Awaiting decision	To be resolved by Governing Council.	Para. 167	
							Interest	N/A	BHD	84,894.25	Awaiting decision	To be determined as per Governing Council decision 16.	Paras. 165-166	
3	Bahrain	4000081	Gulf International Bank B.S.C.	USD	566,891,185.00	566,891,185.00	Contract	Loans to Kuwaiti parties	USD	10,109,098.00	0.00	No proof of direct loss; principal sum not compensable.	Paras. 73, 75-76	32,785.00
							Business loss or course of dealing	Decline in business	USD	16,150,392.00	0.00	Part or all of loss is not direct.	Paras. 110, 112-115, 117	
							Other tangible property	Losses on the sale of assets	USD	456,379,740.00	0.00	Part or all of loss is not direct.	Paras. 119, 121	
							Business loss or course of dealing	Increased costs - salary and termination payments	USD	3,879,896.00	0.00	Part or all of loss is not direct.	Paras. 126-130, 131-134	
							Payment or relief to others	Evacuation/ repatriation/ relocation	USD	29,716.00	0.00	Part or all of loss is outside compensable period.	Paras. 146-148	
							Payment or relief to others	Security or protective measures	USD	32,785.00	32,785.00	N/A	Paras. 144-145	

No.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount d/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of Loss	Sub-category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
							Payment or relief to others	Rental payments	USD	42,000.00	0.00	Part or all of loss is not direct.	Paras. 149-150	
							Claim preparation costs	N/A	USD	52,361.00	Awaiting decision	To be resolved by Governing Council.	Para. 167	
							Interest	N/A	USD	80,215,197.00	Awaiting decision	To be determined as per Governing Council decision 16.	Paras. 165-166	
4	Bahrain	4005783	Bahrain Kuwait Insurance B.S.C.	KWD	501,145.24	1,734,066.57	Business loss or course of dealing	Increased costs - rental and service payments	KWD	3,007.50	10,088.03	Part or all of loss is outside compensable period.	Paras. 135-136	33,067.63
							Business loss or course of dealing	Decline in business	KWD	67,201.50	0.00	No proof of actual loss; no proof of direct loss.	Paras. 108-109, 112-116	
							Other tangible property	Office or other equipment	KWD	5,154.60	13,214.90	Calculated loss is less than the loss alleged.	Paras. 151-152	
							Business loss or course of dealing	Increased costs - salary and termination payments	KWD	50,348.24	0.00	Part or all of loss is unsubstantiated; part or all of loss is outside compensable period.	Paras. 126-130	
							Business loss or course of dealing	Increased costs - restart costs	KWD	7,889.34	9,764.71	Part or all of loss is not direct.	Paras. 139-140	

No.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount d/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of Loss	Sub-category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
							Contract	Unpaid accounts receivables	KWD	289,731.78	Consideration of this element of the claim has been deferred to a later instalment.			
							Interest	N/A	KWD	77,812.28	Awaiting decision	To be determined as per Governing Council decision 16.	Paras. 165-166	
5	Belgium	4000189	Bank Brussels Lambert	USD	40,533.53	40,533.53	Contract	Letters of credit issued by Kuwaiti banks	USD	40,533.53	0.00	Part or all of loss is not direct.	Paras. 77, 80-81	0.00
6	Belgium	4005975	Natisa Belgium NV	DEM	257,085.01	164,587.07	Contract	Bank guarantee	DEM	249,750.00	0.00	No proof of actual loss.	Paras. 97-99	481.33
							Other	Fees on bank guarantee	DEM	7,335.01	481.33	Part or all of loss is not direct.	Paras. 97-98, 100	
7	Direct Submission	4002422	Gulf Investment Corporation	KWD	32,333,752.00	111,881,494.81	Claim transferred to a different category of claims.							
8	Direct Submission	4002386	Mitsui & Co. (USA), Inc.	USD	8,864,410.84	8,864,410.84	Contract	Loans to Iraqi parties	USD	8,864,410.84	0.00	"Arising prior to" exclusion.	Paras. 50-52	0.00
9	Egypt	4002919	Port Said National Bank for Development	GBP	36,488.00	69,368.82	Other tangible property	Traveller's cheques	GBP	36,488.00	0.00	Part or all of loss is not direct.	Paras. 95-96	0.00
10	Egypt	4002920	Misr International Bank	USD	4,974,508.89	4,974,508.89	Contract	Promissory notes	USD	4,974,508.89	0.00	"Arising prior to" exclusion.	Paras. 63-64	0.00
11	Egypt	4002921	Banque Misr Société Anonyme Egyptienne	USD	28,237.72	28,237.72	Other tangible property	Bank accounts	USD	28,237.72	28,237.72	N/A	Paras. 102-103	28,237.72

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				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of Loss	Sub-category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
12	Egypt	4002922	Arab African International Bank Head Office Cairo	USD	68,772,877.42	68,772,877.42	Contract	Loans to Iraqi parties	USD	68,772,877.42	0.00	"Arising prior to" exclusion.	Paras. 36-41, 44-45, 48-49, 51-52, 53-54	0.00
13	Egypt	4005976	Egypt Air Organization	USD	106,775,784.50	106,775,784.50	Other tangible property	Bank accounts	USD	106,775,784.50	96,069,860.33	Non-compensable element of bank balance held in Iraq.	Paras. 102-103	96,069,860.33
14	France	4001894	Union de Banques Arabes et Françaises	USD	521,861,713.38	521,861,713.38	Contract	Loans to Iraqi parties	USD	435,152,923.24	0.00	"Arising prior to" exclusion.	Paras. 36-41, 60-62	0.00
							Contract	Letters of credit issued by Iraqi banks	USD	86,708,790.14	0.00	Part or all of loss is unsubstantiated.	Paras. 55-59	
15	France	4001954	Banque Nationale de Paris	FRF	711,641,903.05	177,440,216.30	Contract	Loans to Iraqi parties	FRF	706,700,944.50	0.00	"Arising prior to" exclusion; part or all of loss is unsubstantiated.	Paras. 60-62	0.00
				USD	41,682,509.13				USD	39,752,735.00				
							Contract	Letters of credit issued by Iraqi banks	FRF	4,940,958.55	0.00	Part or all of loss is unsubstantiated.	Paras. 55-59	
									USD	1,929,774.13				
16	France	4001976	Banque Francaise du Commerce Extérieur	FRF	57,434,374.43	40,952,945.26	Contract	Loans to Iraqi parties	USD	29,196,378.68	0.00	Part or all of loss is unsubstantiated.	Para. 14	0.00
				USD	29,996,278.68		Contract	Letters of credit issued by Iraqi banks	FRF	57,434,374.45	0.00	"Arising prior to" exclusion; part or all of loss is unsubstantiated.	Paras. 55-59	
									USD	799,900.00				

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				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of Loss	Sub-category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
17	France	4002076	Société Générale	DEM	15,595,134.00	199,137,816.69	Contract	Loans to Iraqi parties	DEM	14,730,319.00	0.00	Part or all of loss is unsubstantiated.	Para. 14	0.00
				USD	187,751,377.00				USD	187,590,377.00				
				FRF	7,351,166.00		Contract	Letters of credit issued by Iraqi banks	DEM	864,815.00	0.00	Part or all of loss is unsubstantiated.	Paras. 55-59	
									FRF	7,351,166.00				
									USD	161,000.00				
18	Germany	4000549	Bayerische Vereinsbank AG	DEM	30,558,902.79	19,563,958.25	Contract	Letters of credit issued by Iraqi banks	DEM	30,558,902.79	0.00	"Arising prior to" exclusion.	Paras. 55-59	0.00
19	Germany	4000557	Deutsche Bank AG	DEM	11,199,733.14	7,170,123.65	Contract	Loans to Iraqi parties	DEM	11,199,733.14	0.00	"Arising prior to" exclusion.	Paras. 47, 51-52	0.00
20	Germany	4000579	Westdeutsche Landesbank Girozentrale	DEM	58,371,276.08	37,369,574.96	Contract	Loans to Iraqi parties	DEM	58,371,276.08	0.00	"Arising prior to" exclusion.	Paras. 42-43, 45	0.00
21	Germany	4000860	Société Générale - Elsassische Bank & Co.	DEM	138,063,694.70	88,389,049.10	Contract	Loans to Iraqi parties	DEM	138,063,694.70	0.00	"Arising prior to" exclusion.	Paras. 42-43, 45	0.00
22	Germany	4000861	Société Générale - Elsassische Bank & Co.	DEM	18,202,242.38	11,653,164.14	Contract	Loans to Iraqi parties	DEM	18,202,242.38	0.00	"Arising prior to" exclusion.	Paras. 60-62	0.00
23	Greece	4005962	National Westminster Bank PLC	GRD	9,538,135.00	61,667.65	Payment or relief to others	Security or protective measures	GRD	9,538,135.00	0.00	Part or all of loss is outside compensable area.	Paras. 144-145	0.00
24	Greece	4005963	Arab-Hellenic Bank SA	USD	583,437.00	583,437.00	Claim transferred to a different category of claims.							

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				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of Loss	Sub-category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
25	Greece	4005964	Bank of Greece	GRD	13,281,169.00	85,867.78	Contract	Unpaid accounts receivables	GRD	13,281,169.00	0.00	Failure to comply with formal filing requirements.	Para. 14	0.00
26	India	4000512	State Bank of India, New Delhi	USD	511,000.00	511,000.00	Other tangible property	Cash	USD	511,000.00	415,471.36	Part or all of loss is unsubstantiated.	Paras. 151-152	415,471.36
27	India	4000678	State Bank of India	USD	170,808.00	170,808.00	Contract	Management fees	USD	142,279.00	0.00	Part or all of loss is unsubstantiated.	Paras. 109, 112-116	0.00
							Business loss or course of dealing	Increased costs - salary and termination payments	USD	28,529.00	0.00	Part or all of loss is unsubstantiated.	Paras. 126-129	
28	India	4000293	State Bank of Patiala/Vijay Arts Handicrafts	USD	117,168.00	117,168.00	Contract	Unpaid accounts receivables	USD	117,168.00	0.00	No proof of direct loss.	Paras. 82-85	0.00
29	India	4000769	State Bank of India	GBP	13,171.63	26,121,963.83	Contract	Letters of credit issued by Iraqi banks	GBP	13,171.63	Consideration of this claim has been deferred to a later instalment.		Paras. 55-59	N/A
				USD	26,092,504.41				USD	26,092,504.41				
				INR	77,881.43				INR	77,881.43				
30	Italy	4001299	Banca Commerciale Italiana	ITL	86,861,135.00	74,925.50	Contract	Letters of credit issued by Kuwaiti banks	ITL	86,861,135.00	74,405.63	N/A	Paras. 77-79	74,405.63
31	Japan	4000955	The Tokio Marine & Fire Insurance Co. Ltd.	JPY	5,460,182.00	37,852.22	Other tangible property	Office or other equipment	JPY	2,238,503.00	11,393.81	Part or all of loss is unsubstantiated.	Paras. 151-152	29,513.48
							Payment or relief to others	Personal property reimbursement	JPY	3,221,679.00	18,119.68	Part or all of loss is unsubstantiated.	Paras. 142-143	

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32	Jordan	4002433	Union Bank for Savings & Investment	USD	283,189.00	283,189.00	Other tangible property	Cash	USD	283,189.00	283,189.00	N/A	Paras. 151-152	283,189.00
33	Luxembourg	4001180	Vereinsbank International Societe Anon,me	DEM	3,113,971.12	2,976,469.10	Contract	Letters of credit issued by Iraqi banks	DEM	3,113,971.12	0.00	"Arising prior to" exclusion.	Paras. 55-59	0.00
				USD	765,192.00				USD	765,192.00				
				GBP	114,509.00				GBP	114,509.00				
34	Netherlands	4001409	ABN Amro Bank N.V. Head Office	NLG	101,355.10	57,555.42	Contract	Letters of credit issued by Kuwaiti banks	NLG	101,355.10	56,496.71	N/A	Paras. 77-79	56,496.71
35	Netherlands	4001567	ABN AMRO Bank N.V.	USD	8,411,304.96	8,411,304.96	Contract	Loans to Kuwaiti party; standby letters of credit	USD	8,411,304.96	0.00	No proof of direct loss.	Paras. 73, 75-76, 82-85	0.00
36	Saudi Arabia	4002476	Saudi Hollandi Bank	SAR	1,967,956.00	525,488.92	Payment or relief to others	Security or protective measures	SAR	809,133.68	216,056.88	N/A	Paras. 144-145	489,130.97
							Business loss or course of dealing	Increased costs - additional staff costs	SAR	650,184.00	173,613.89	N/A	Paras. 131-133	
							Payment or relief to others	Evacuation/ repatriation/ relocation	SAR	496,638.32	99,460.21	Part or all of loss is unsubstantiated.	Paras. 146-148	
							Claim pre-paration costs	N/A	SAR	12,000.00	Awaiting decision	To be resolved by Governing Council.	Para. 167	

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37	Saudi Arabia	4002441	National Co. for Co-perative Insurance	SAR	188,943.42 f/	50,452.18	Payment or relief to others	N/A	SAR	147,943.42	0.00	Failure to comply with formal filing requirements.	Para. 14	0.00
							Payment or relief to others	Security or protective measures	SAR	42,000.00	0.00			
38	Thailand	4001595	Bangkok Bank Limited	USD	72,540,486.99	72,540,486.99	Contract	Letters of credit issued by Iraqi banks	USD	72,540,486.99	Consideration of this claim has been deferred to a later instalment.		Paras. 55-59	N/A
39	Tunisia	4002590	Banque Nationale de Développement Touristique 'BNDT'	TND	1,007,600.00	1,170,267.13	Business loss or course of dealing	Decline in business	TND	1,007,600.00	0.00	Part or all of loss is outside compensable area.	Paras. 108, 111-115, 118	0.00
40	Tunisia	4002592	Banque Tuniso-Koweitienne de Dévelopement	TND	16,200,000.00	18,815,331.01	Business loss or course of dealing	Decline in business	TND	16,200,000.00	0.00	Part or all of loss is not direct; part or all of loss is unsubstantiated.	Paras. 108, 111-115, 118	0.00
41	Tunisia	4002593	Union Internation-ale de Banques	TND	1,337,949.00	1,553,947.74	Contract	Letters of credit; loans	TND	1,269,949.00	Consideration of this claim has been deferred to a later instalment.		Paras. 55-59	N/A
							Business loss or course of dealing	Decline in business	TND	68,000.00				
42	Tunisia	4002594	Société Tunisienne de Banque	TND	13,400,000.00	15,563,298.49	Business loss or course of dealing	Decline in business	TND	6,000,000.00	0.00	Failure to comply with formal filing requirements.	Para. 14	0.00

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							Payment or relief to others	N/A	TND	6,400,000.00	0.00			
							Other	Currency exchange losses	TND	1,000,000.00	0.00			
43	Turkey	4001629	T. Garanti Bankasi A.S.	USD	8,628,366.00	8,628,366.00	Contract	Letters of credit issued by Iraqi banks	USD	8,628,366.00	Consideration of this claim has been deferred to a later instalment.		Paras. 55-59	N/A
44	Turkey	4001631	Pamukbank T.A.S. General Management	USD	806,038.56	806,038.56	Contract	Loans to Iraqi parties	USD	806,038.56	0.00	"Arising prior to" exclusion.	Paras. 60-62	0.00
45	Turkey	4001650	TC Ziraat Bankasi A.S.	USD	9,428,940.47	9,428,940.47	Contract	Promissory notes	USD	9,428,940.47	0.00	"Arising prior to" exclusion.	Paras. 63-64	0.00
46	United Kingdom	4001991	M.W. Marshall & Co. Limited	KWD	215,544.00	758,783.26	Business loss or course of dealing	Decline in business	KWD	114,855.00	347,879.31	Calculated loss is less than loss alleged.	Paras. 108-109, 11[illegible]-116	510,264.64
				GBP	6,815.00		Other tangible property	Office or other equipment	KWD	12,530.00	20,989.62	Part or all of loss is unsubstantiated.	Paras. 151-152	
							Business loss or course of dealing	Increased costs - salary and termination payments	KWD	85,155.00	140,837.37	Part or all of loss is unsubstantiated; reduction to avoid multiple recovery.	Paras. 126-129	
							Other tangible property	Cash	KWD	323.00	558.34	Part or all of loss is unsubstantiated.	Paras. 151-152	
							Business loss or course of dealing	Increased costs - advance rental payments	KWD	2,681.00	0.00	Part or all of loss is unsubstantiated.	Paras. 135-136	

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							Claim preparation costs	N/A	GBP	6,815.00	Awaiting decision	To be resolved by Governing Council.	Para. 167	
47	United Kingdom	4001998	Bank of Credit & Commerce International (Overseas) Limited (BCCI)	USD	1,623,461.00	1,623,461.00	Business loss or course of dealing	Decline in business	USD	66,084.00	33,042.00	Insufficient evidence of value; part or all of loss is unsubstantiated.	Paras. 86, 89, 94	33,042.00
							Other tangible property	Traveller's cheques	USD	1,458,012.00	0.00	Part or all of loss is unsubstantiated; no proof of actual loss.	Paras. 86-88, 90-93	
							Other tangible property	Returned settlement cheques	USD	16,305.00	0.00	Part or all of loss is unsubstantiated; no proof of direct loss.	Paras. 88, 93	
							Business loss or course of dealing	Increased costs - traveller's cheques printing	USD	3,060.00	0.00	Part of all of loss is unsubstantiated.	Paras. 88, 93	
							Business loss or course of dealing	Increased costs - related staff costs	USD	80,000.00	0.00	Part or all of loss is unsubstantiated.	Paras. 88, 93	
48	United Kingdom	4002002	Bank of Credit & Commerce International (Overseas) Limited (BCCI)	USD	16,393,531.88	16,393,531.88	Contract	Letters of credit issued by Iraqi banks	USD	16,393,531.88	Consideration of this claim has been deferred to a later instalment.		Paras. 55-59	N/A
49	United Kingdom	4002174	The Royal Bank of Scotland PLC	GBP	19,700.00	37,452.47	Contract	Unpaid accounts receivables	GBP	19,700.00	31,009.26	Part or all of loss is unsubstantiated.	Paras. 82-85	31,009.26

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50	United Kingdom	4002196	Hon Hing Hong	USD	5,822,176.00	5,822,176.00	Other tangible property	Office or other equipment	USD	1,029,996.00	0.00	Failure to comply with formal filing requirements.	Para. 14	0.00
							Other tangible property	Bank balances	USD	200,000.00	0.00			
							Other tangible property	Cash	USD	1,275,000.00	0.00			
							Real property	Damage to premises	USD	476,000.00	0.00			
							Business loss or course of dealing	Decline in business	USD	2,117,650.00	0.00			
							Other	N/A	USD	723,530.00	0.00			
51	United Kingdom	4002199	The Thomas Cook Group Ltd.	GBP	1,893,335.00	3,599,496.20	Other tangible property	Traveller's cheques	GBP	1,663,309.00	99,678.00	Part or all of loss is unsubstantiated; no proof of actual loss.	Paras. 86-87, 90-92	404,989.11
							Contract	Unpaid accounts receivables	GBP	230,026.00	305,311.11	Part or all of loss is unsubstantiated.	Paras. 82-85	
52	United Kingdom	4002220	Guardian Royal Exchange Assurance PLC	KWD	364,913.00	1,262,674.74	Contract	Unpaid account receivables	KWD	364,913.00	Consideration of this claim has been deferred to a later instalment.		N/A	N/A
53	United States of America	4002226	American Express International Inc.	USD	2,283,245.00	2,283,245.00	Business loss or course of dealing	Decline in business	USD	729,000.00	211,756.00	Calculated loss is less than loss alleged; no proof of direct loss; part or all of loss is unsubstantiated.	Paras. 108-109, 112-116	882,368.74

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				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of Loss	Sub-category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
							Contract	Unpaid accounts receivables	USD	1,175,607.00	659,563.50	Part or all of loss is unsubstantiated; part or all of loss is not direct.	Paras. 65-66, 82-85	
							Other tangible property	Bank balances	USD	143,720.00	0.00	Part or all of loss is unsubstantiated.	Paras. 102-103	
							Business loss or course of dealing	Increased costs - salary and termination payments	USD	33,245.00	0.00	Part or all of loss is unsubstantiated.	Paras. 126-129; 131-133	
							Payment or relief to others	Evacuation/ repatriation/ relocation	USD	155,541.00	6,961.24	No proof of direct loss; part or all of loss is not direct; part or all of loss is unsubstantiated.	Paras. 146-148	
							Payment or relief to others	Personal property reimbursement	USD	9,480.00	0.00	Part or all of loss is unsubstantiated.	Paras. 142-143	
							Payment or relief to others	Security or protective measures	USD	36,652.00	4,088.00	Part or all of loss is not direct.	Paras. 144-145	
54	United States of America	4002227	American Express Travel Related Services Co. Inc.	USD	911,257.00	911,257.00	Other tangible property	Traveller's cheques	USD	903,306.00	68,644.77	Part or all of loss is unsubstantiated; no proof of actual loss.	Paras. 86-88, 90-93	76,595.77
							Other	Auditors fees	USD	7,951.00	7,951.00	N/A	Paras. 88, 93	

No.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount d/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of Loss	Sub-category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
55	United States of America	4002249	Merrill Lynch & Co. Inc.	USD	4,632,982.63	4,632,982.63	Business loss or course of dealing	Increased costs - salary and termination payments	USD	1,087,067.36	605,590.00	Calculated loss is less than loss alleged; part or all of loss is not direct.	Paras. 127-129, 131-133	722,730.00
							Payment or relief to others	Evacuation/ repatriation/ relocation	USD	147,245.86	108,563.00	Part or all of loss is unsubstantiated.	Paras. 146-148	
							Payment or relief to others	Security or protective measures	USD	1,181.00	1,181.00	N/A	Paras. 144-145	
							Business loss or course of dealing	Increased costs - advance payments and deposits	USD	65,149.00	6,515.00	Part or all of loss is unsubstantiated.	Paras. 135-136	
							Other tangible property	Office or other equip-ment	USD	8,808.00	881.00	Part or all of loss is unsubstantiated.	Paras. 151-152	
							Business loss or course of dealing	Decline in business	USD	676,667.00	0.00	Part or all of loss is unsubstantiated.	Paras. 108-109, 112-116	
							Business loss or course of dealing	Permanent loss of value of business	USD	2,320,000.00	0.00	Part or all of loss is unsubstantiated.	Paras. 108-109, 112-116	
							Other tangible property	Interest and charges on bank balance	USD	200,798.90	Consideration of this claim has been deferred to a later instalment.		Paras. 104-106	
							Other	Legal fees	USD	28,810.26	0.00	Part or all of loss is not direct.	Paras. 137-138	

No.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount d/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of Loss	Sub-category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
							Other	Legal fees, including claim preparation costs	USD	97,255.25	Awaiting decision	Part or all of loss is unsubstantiated; to be resolved by Governing Council. g/	Para. 167	
56	United States of America	4002256	The Chase Manhattan Bank (National Association)	USD	11,828,806.26	11,828,806.26	Contract	Loans to Iraqi parties	USD	11,828,806.26	0.00	"Arising prior to" exclusion.	Paras. 36-41	0.00
57	United States of America	4002352	The Bank of New York	USD	26,281,300.06	26,281,300.06	Contract	Loans to Iraqi parties	USD	26,281,300.06	0.00	"Arising prior to" exclusion.	Paras. 36-41	0.00

Notes to table of recommended awards

a/ In accordance with the Governing Council's decision taken at its twenty-seventh session held in March 1998, the Panel has not considered unsolicited supplements or amendments submitted after 11 May 1998 to previously filed claims. Accordingly, the total claimed amounts stated in this table include only those supplements and amendments to the original claimed amounts submitted prior to 11 May 1998 or submitted after that date where these comply with the requirements of the Commission.

b/ Currency codes: ATS (Austrian schilling), BHD (Bahraini dinar), DEM (Deutsche mark), FRF (French franc), GBP (Pound sterling), GRD (Greek drachma), INR (Indian rupee), ITL (Italian lira), JPY (Japanese yen), KWD (Kuwaiti dinar), NLG (Netherlands guilder), SAR (Saudi Arabian riyal), TND (Tunisian dinar), USD (United States dollar).

c/ For claims originally expressed by the claimant in currencies other than United States dollars, the secretariat has converted the amount claimed to United States dollars based on August 1990 rates of exchange as indicated in the United Nations Monthly Bulletin of Statistics, or in cases where this exchange rate is not available, the latest exchange rate available prior to August 1990. This conversion is made solely to provide an indication of the amount claimed in United States dollars for comparative purposes. In contrast, the date of the exchange rate that was applied to calculate the recommended amount is described in paragraphs 160 to 164.

d/ Since many claimants have presented similar losses in different ways, the Panel has recategorized certain of the losses using standard classifications, as appropriate. This procedure is intended to ensure consistency, equality of treatment and fairness in the analysis of the claims and is consistent with the practice of other panels of the Commission.

e/ As used in this table, "N/A" means not applicable.

f/ The Panel notes that the claim form lists the total amount claimed as SAR 188,943. In reviewing the claim, however, the Panel has determined the claimant has claimed two separate loss amounts which total SAR 189,943.42. These separate loss amounts are reflected in the reclassified amount column.

g/ With respect to legal fees incurred in closing the claimant's office, the Panel finds that the claimant has failed to substantiate this portion of the claim. The Panel makes no recommendation with respect to that portion of the claim regarding claim preparation costs.